

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 09-50026-reg
MOTORS LIQUIDATION COMPANY, . Chapter 11
et al., f/k/a GENERAL .
MOTORS CORP., et al, . (Jointly administered)
Debtors. . One Bowling Green
Debtors. . New York, NY 10004
. Monday, August 31, 2015
..... 9:48 a.m.

TRANSCRIPT OF NOTICE OF HEARING/NOTICE OF STATUS CONFERENCE TO
BE HELD IN CONNECTION WITH THE COURT'S CASE MANAGEMENT ORDER,
DATED AUGUST 19, 2015 [Dkt. No. 13383], AND THE LETTERS FILED
IN RESPONSE THERETO (RELATED DOCUMENT(S) 13383) [13396]

**BEFORE THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY COURT JUDGE**

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1 (Proceedings commence at 9:48 a.m.)

2 THE COURT: I think I know all of you. There's no
3 need for you to make appearances in advance, but when you come
4 up to the mike, the main lectern to speak, please identify
5 yourselves for the record.

6 I've read all of your letters and the attachments to
7 the extent that I haven't read them previously. I have
8 problems with both sides' positions, especially vis-a-vis
9 proposals on timing, but also vis-a-vis matters of substance.
10 It seems to me that neither side acknowledges -- and I'm
11 pushing the GUC Trust and the indentured trustee off to the
12 side for the time being. It seems to me that neither side
13 acknowledges that it is subject to the jurisdiction and rulings
14 of two separate judges and that anything Jesse Furman says
15 counts, as far as I'm concerned, and I would have thought that
16 anything that I say counts insofar as proceedings in the
17 district court is concerned. And what I need from each of you
18 is realistic proposals in terms of prioritization of matters so
19 that I can get Jesse Furman the rulings he needs so that the
20 bellwether trial or trials are not delayed.

21 It seems to me, subject to your rights to be heard,
22 that by far the most important of the matters that we need to
23 address are the matter of punitives. And I will also decide
24 preliminarily, to the extent that it's necessary, the matter of
25 imputation, but I thought I had already made my views on

1 imputation quite clear and that that was a matter that was
2 something that I had already addressed in at least one, if not
3 more than one, of the three opinions I've issued in 2015 on the
4 subject.

5 Reading your various letters, it seems to me that one
6 or both sides don't get it. I think the plaintiffs justifiably
7 criticize New GM for wanting to re-litigate matters upon which
8 I've already ruled. Conversely, I have problems with stuff
9 from designated counsel, including from Mr. Weintraub, on
10 things like an unwillingness to accept rulings that I've
11 already made.

12 And I think that both sides are insufficiently
13 nuanced in their analysis. There's some shtuss about my
14 findings of fact. I didn't make findings of fact. You guys
15 stipulated to facts, and I took all of the facts as undisputed.
16 Your stipulations that you made are binding before me.
17 Stipulations you made in my court are binding on me. It's
18 Jesse Furman's right to decide whether he considers those
19 stipulations binding upon him, but I made no findings of fact
20 on my own. Based on undisputed facts, I guess some of the
21 stuff that I decided can be regarded as a mixed question of
22 fact and law, but it was principally a conclusion of law.

23 On matters that I decided, it is too late to reargue.
24 It's too late by reason of the passage of time and it's too
25 late by reason of the fact that jurisdiction over matters that

1 I decided has gone up to the court of appeals.

2 Conversely, I've read Jesse Furman's opinion going
3 along with his order, and I think he was pretty clear in his
4 reasoning, as well. And a lot of what I saw, especially from
5 Mr. Weintraub, perhaps to a lesser extent from Mr. Weisfelner,
6 seems to be looking to reargue that stuff, as well. And if
7 there is to be reargument on anything where Jesse Furman
8 expressed a view, that's got to be taken to him, either by a
9 motion for reargument or, as was threatened by still another,
10 motion to withdraw the reference. But until and unless Jesse
11 Furman expresses any different views, I think we know where
12 we're headed.

13 Now, it seems to me that we have three things that
14 Jesse Furman identified as important to him, and then we have
15 one or two more that I have to worry about as well. Seems to
16 me that highest on the list is determining the issues,
17 vis-a-vis punitive damages. It also seems to be raised in this
18 -- I don't think I can pronounce it properly -- Bablisik
19 (phonetic) case. You can tell me how it's pronounced, if
20 that's not the way. We'll also need to determine the extent to
21 which knowledge of New GM personnel is imputed to New GM. I
22 thought I had expressed views on that and always had an
23 understanding on that, which I fleshed out in the Peller
24 reargument decision -- or Bledsoe, rather, reargument
25 decision. But if there was something upon which I have not

1 ruled, as contrasted to wanting to reargue something which I
2 have, then you can identify that for me.

3 And third is getting the bankruptcy work done that is
4 necessary for the bellwether trial or trials beyond those two
5 issues. And if there is such, I need you to identify that for
6 me. I don't know whether that's just the markup of the second
7 amended consolidated complaint or something else. Again, I
8 need your help on it.

9 Now, I see Ms. Rubin there. Yes, you said in your
10 letter, and I agree with you, that your issues are independent
11 and they can be done first, but I also wonder whether they're
12 the least urgent of what we need to get done over the next
13 several months. So I want discussion as to whether, even
14 though the GUC Trust stuff may be easier, whether we have the
15 ability, if we need to, to push it back pending more urgent
16 stuff, most significantly punitive.

17 I want a clarification as to what exactly we're
18 talking about on bellwether trials -- well, trial or trials in
19 the district court. At first, I thought the bellwether trial
20 was going to be on economic loss claims, but now there's a hint
21 that it could be on personal injury claims, and I need a
22 clarification on that.

23 In a way, personal injury claims could be easier,
24 from my perspective, especially if they're on post-sale
25 accident cases, in which case the only thing I would need to

1 resolve is punitives. But I need your help on that issue.

2 I also wonder whether punitives is more nuanced than
3 either side has argued in the papers that I've seen so far,
4 which mainly are Mr. Steinberg's brief against a non-designated
5 counsel, on the one hand, Mr. Weintraub's letter on the other.
6 It may be -- and I'll expect you guys to brief it when we talk
7 about briefing -- that the extent to which punitives are
8 permitted on the one hand or prohibited on the other, once you
9 get past assumptions of various claims of liabilities, could,
10 by analogy or otherwise to the remainder of the April 15th
11 decision, turn what is being relied upon as the predicate for
12 the punitive damages.

13 So if, by way of example, the predicate is as in one
14 complaint I read, stuff that took place prior to July 2009, one
15 might come to one view, and if the predicate fit the punitives
16 to something that took place after July 2009, the conclusion
17 might be different. In any event, that's not a today issue,
18 but that's why I think that punitives is the one that is
19 probably going to need to go to the top of the list.

20 All right. Just one or two other things. One might
21 think that a schedule that doesn't even have any oral argument
22 until something after November 2nd is way too leisurely, and
23 we're going to have to do much better in terms of disciplining
24 ourselves to get the work done that Jesse Furman needs. What
25 I'm going to need from each of you is a sensible triaging

1 approach to get the most important stuff done first under
2 schedules that will appropriately utilize the fact that each
3 side has mountains of resources, two, three, four law firms on
4 each side, and that people are going to have to work through
5 the fall, actually through the weeks before the fall, before
6 September 21st. So I want to hear on that.

7 And then one last thing. I don't know how to say it
8 delicately, but the notion of giving me 120 pages of briefs on
9 marked-up complaints made me go ballistic. When I see the
10 marked-up pleadings, I know what I need to do. Subject to your
11 rights to be heard, I'll let each of you give me a letter of
12 fives pages, no more than that, on commentary on your marked-up
13 complaints if you want to. And the presumption is going to be
14 simultaneous submissions on everything I get going forward with
15 a brief time for simultaneous replies. And we don't have the
16 luxury of going seriatim as we would if this were an ordinary
17 breach of fiduciary duty case or busted fraudulent campaigns
18 case. We've got to get work done so that work that needs to be
19 done in district court isn't delayed.

20 All right. Who am I going to hear from first?

21 MR. WEINTRAUB: Your Honor, I've heard my name
22 mentioned more than once, so --

23 THE COURT: Well, you're all going to get a chance to
24 be heard before we're done. All right. I'll hear from you
25 first, Mr. Weintraub.

1 MR. WEINTRAUB: I want to make sure that I do address
2 everything that the Court asked me to address. I am here
3 representing the plaintiffs represented by Mr. Hilliard in
4 personal injury cases.

5 The first thing that I heard the Court ask is, is it
6 correct that the bellwether trials concerned post-sale personal
7 injury accident cases, and that is correct. There are six of
8 them that are scheduled to begin on a rolling basis. The first
9 one is in January of next year, and a letter that we submitted
10 to the Court did identify the bellwether case.

11 THE COURT: You named them by name.

12 MR. WEINTRAUB: Yes.

13 THE COURT: And those are injury, death or both?

14 MR. WEINTRAUB: They -- I believe they are both.

15 THE COURT: Okay. And to what extent do they still
16 have any economic loss components besides injury or death?

17 MR. WEINTRAUB: My understanding, Your Honor, is that
18 none of them will have economic loss claims. Only two of them,
19 based upon my reading and my consultation with counsel, contain
20 what could be considered to be economic loss claims, and those
21 are -- can be amended out.

22 THE COURT: Okay.

23 MR. WEINTRAUB: As Your Honor knows, the post-sale
24 cases were not part of the motion to stay and they were not
25 part of the briefing on the threshold issues. I agree with

1 Your Honor that the issue of punitive damages should be front
2 and center, and we're prepared to deal with them on an
3 expedited basis to accommodate this Court and the district
4 court. I also agree with Your Honor that the punitive damages
5 issues are more nuanced than are suggested in some of the
6 pleadings filed by others in the case.

7 There are really three paths to punitive damages in
8 this case. One is, as we contend, it's an assumed liability.
9 If you look at the asset purchase agreement, we think it's
10 clear that it's an assumed liability. As an assumed liability,
11 everything having to do with Old General Motors is front and
12 center and fair play.

13 Even if it is not an assumed liability, there are
14 still two paths to punitive damages. One would be based upon
15 what we were calling imputation is the fact that New GM
16 inherited the books, the records, the reports, the databases,
17 the files of Old GM, and then it inherited the employees and
18 the knowledge and the memory and the brains of those employees.
19 And to the extent that any of that inherited knowledge is an
20 element of punitive damages, we think it's fair play.

21 The third path to punitive damages would be assuming,
22 for purposes of argument, that there is no such thing as
23 inherited knowledge and that the files were all destroyed as of
24 right before the closing and the employees all were brainwashed
25 right before the closing. Based upon what was accumulated

1 knowledge beginning from and after the closing and the failure
2 to recall, the failure to warn, the information about repeated
3 accidents within New GM without regard to old information and
4 old knowledge would be a path to punitive damages. So there
5 are three ways to get to punitive damages.

6 We think that you don't need to mark up the
7 complaints to address that because either the parties [sic] are
8 entitled -- the plaintiffs are entitled to punitive damages or
9 they're not, based upon a yes/no answer. I think that through
10 either motions in limine or restrictions on what can be
11 permissibly proven at trial or based upon post-verdict motions,
12 there could be a determination as to whether there can be
13 punitive damages or not.

14 THE COURT: It was your reference to yes/no without
15 being as nuanced as you were today, Mr. Weintraub, that had
16 caused me to be as critical of what you said in your letter. I
17 take it what you're saying is on the lack of need for more
18 pleadings, that it is, in essence, a conceptual inquiry based
19 on the valuation of the three things you articulated, after
20 which I would then say yes/no based upon parsing those three
21 considerations.

22 MR. WEINTRAUB: Yes, Your Honor. Either this court
23 or -- we do believe that Judge Furman, through motions in
24 limine, could make the same determination.

25 THE COURT: Well, that was the other thing that got

1 me so upset, Mr. Weintraub. It seems to me -- and this was
2 something that became more relevant in the difference in views
3 between Mr. Steinberg and Mr. Weisfelner -- it seems to me that
4 my role in life is as kind of a gatekeeper on pleadings, to
5 ascertain the extent to which certain kinds of claims are or
6 are not permissible under the judgment and under bankruptcy
7 law, after which Jesse Furman would decide whether whatever
8 passes the gatekeeper is or is not actionable as a matter of
9 non-bankruptcy law. Do you agree or disagree with that
10 preliminary way or thinking of it?

11 MR. WEINTRAUB: Your Honor, the reason we took the
12 position that we took was many-fold. First, we were not
13 involved in the recent spate of motions to withdraw the
14 reference. We were not part of that. Part of the reason we
15 were not part of that is because we were dealing with wholesale
16 accident cases, which we viewed as an assumed liability and
17 therefore not directly within the purview of this Court.

18 It's pretty clear what's a pre-sale accident and
19 what's a post-sale accident is driven by the date of the
20 accident. Because there were post-sale accidents and because
21 we viewed them as essentially assumed liabilities, we didn't
22 see the close connection to this Court that the pre-sale cases
23 have and the economic damages cases have. That said,
24 obviously, we will abide by whatever this Court rules.

25 THE COURT: All right. Well, at least you didn't

1 say, with due respect.

2 MR. WEINTRAUB: I did not, Your Honor. I never say
3 that.

4 In addition, you mentioned that my presentation here
5 was more nuanced than it was in the letter. I viewed the
6 letter as for purposes of scheduling. People are laying out
7 dates and people are laying out briefing schedules and whether
8 or not they wanted a hearing, and I didn't view that letter as
9 a letter brief to the Court. And that's why we handled the
10 substance rather more lightly than we would have had it been a
11 substantive submission.

12 I don't know if, among all of those other questions
13 at the beginning, there are any more for me.

14 THE COURT: Let me just get your bottom line then.
15 You would agree that we should put punitives to the top of the
16 queue, so to speak, and you would suggest that the briefing on
17 the punitives focus, in particular, on the three things you
18 mentioned, whether they were contractually assumed, whether --
19 or the extent to which New GM employees' post-sale knowledge
20 should be imputed to New GM and the extent to which they
21 accumulated knowledge after the sale should be relevant to
22 punitives.

23 MR. WEINTRAUB: Yes, Your Honor. And not to play
24 hide the ball, and it's something we've been thinking about, we
25 think there may be latent due process issues here, as well,

1 because of the timing of the purchase of the vehicles that were
2 involved in the accidents. And not to get too deeply into the
3 weeds, there is an argument that people who purchased their
4 vehicles pre-sale but had the accident post-sale were known
5 creditors entitled to constitutional sufficient notice and they
6 didn't get that notice and they were prejudiced because but for
7 that notice, they may not have had an accident at all because
8 they might not have been driving the vehicle.

9 With respect to post-sale purchasers, we think that
10 they would fall under the category of future claimants and
11 there would be no amount of notice that could have been given
12 to those claimants. They fell into the -- what I call the
13 Grumman Olson category of future claim. And I think that those
14 due process issues may have an impact on if the Court doesn't
15 believe that this is an assumed liability, whether or not the
16 successor liability shield would be appropriate for the pre-
17 sale purchasers who are injured post sale and the post-sale
18 purchasers that were injured post-sale.

19 THE COURT: I understood the legal references you
20 were making, Mr. Weintraub, but not the factual predicate. If
21 they were injured post-sale, I thought New GM was bellying up
22 to the bar to assume potential liability for those either way.

23 MR. WEINTRAUB: That's correct, Your Honor. But
24 remember that we're talking about punitive damages and three
25 paths to punitive damages. The first path is we contend it's

1 an assumed liability. If we're not successful in convincing
2 the Court that it's an assume liability, the question becomes
3 whether or not there's another path to successor -- I'm sorry,
4 to punitive damages.

5 THE COURT: You're focusing purely on punitives at
6 this point.

7 MR. WEINTRAUB: Yes.

8 THE COURT: Okay.

9 MR. WEINTRAUB: There's no question on the
10 compensatory.

11 THE COURT: Okay. All right. Anything else before I
12 let other people be heard? I think at this point, then, I
13 should probably hear from Mr. Weisfelner after you and then
14 from Mr. Steinberg.

15 MR. WEINTRAUB: Unless you have any further questions
16 from me, Your Honor.

17 THE COURT: No, thank you.

18 MR. WEINTRAUB: Thank you.

19 MR. WEISFELNER: Good morning, Judge.

20 THE COURT: Good morning.

21 MR. WEISFELNER: For the record, Edward Weisfelner,
22 together with my partner, Howard Steel, from (indiscernible) as
23 designated counsel for the economic loss plaintiffs. Also on
24 the phone is Steve Berman, Elizabeth Cabraser, the co-leads for
25 what we commonly refer to as the "economic loss plaintiffs."

1 Your Honor, let me begin by stating our view that the
2 question of punitive damages is one that is time-sensitive with
3 regard to the bellwether trials, and as Your Honor has heard,
4 those are for personal injury/wrongful death cases as opposed
5 to the cases that are our collective responsibility. So in
6 terms of prioritizing for the Court and the parties, I think
7 it's more critical that Your Honor deal with the interest of
8 Mr. Weintraub and the interest of New GM and consider our
9 issues on a secondary basis.

10 I say that because -- and again, I'm sensitive to
11 Your Honor's concern that our arguments sort of lacked nuance,
12 but it seemed to me that what Your Honor has determined,
13 obviously subject to appeal, is that the sale order and related
14 injunction are to remain in place but for independent claims.
15 And the question, I guess, for all of us is what constitutes an
16 independent claim. And, Your Honor, there are those that would
17 argue that your decision had some language that could be
18 construed in different ways depending on whether you were
19 looking at it from the perspective of New GM or looking at it
20 from the perspective of the plaintiffs. We took some comfort,
21 frankly, in some of the things that Your Honor said in
22 connection with the -- I guess it was the Bledsoe reargument,
23 and in particular, footnote --

24 THE COURT: Where I fleshed out what I was thinking
25 when I was talking about the knowledge of New GM personnel?

1 MR. WEISFELNER: In part, but it went beyond that.
2 What we took, both from your original decision, the judgment,
3 and ultimately the Bledsoe reargument was that you can state an
4 independent claim, even if you make a reference to Old GM. You
5 can state an independent claim even if it's based on an Old GM
6 part or vehicle. What you can't do is take a successor
7 liability claim and attempt to dress it up as an independent
8 claim. In other words, the way we read it, New GM cannot be
9 held liable for Old GM acts. Conversely, New GM can and should
10 be held liable, subject to courts where complaints are pending,
11 for their own independent, actionable conduct or failure to
12 act, which, in our view, requires -- putting aside the whole
13 issue of clearing the underbrush so that Judge Furman can get
14 to his bellwether trials as originally anticipated, for us, it
15 seems to us that the predominant issue is a determination once
16 and for all from this Court as to whether or not either the
17 second amended consolidated complaint or, for that matter, the
18 State of Arizona's complaint or the State of California's
19 complaint does or does not set forth independent claims.
20 Because it seems to us that -- and then we could then go
21 through the laundry list of the so-called, quote, "other
22 matters" that GM has identified.

23 Once Your Honor makes the determination as to whether
24 or not there is or is not independent claims, it seems to us
25 the rest of the other matters sort of fall into place. So

1 that, for example, if we have not set forth independent claims,
2 then, frankly, the question of punitive damages is moot. There
3 are no damages. There's no claim. You're not going forward.
4 You can't prove up compensatory damages, let alone, special or
5 punitive damages, if you haven't set forth an independent
6 claim.

7 Conversely, if you do have an independent claim,
8 which by definition is a claim against New GM that is not a
9 disguised successor liability claim, then your entitlement to
10 damages has nothing to do with the bankruptcy proceeding or
11 anything else that Your Honor has previously determined.
12 Either you've got compensatory damages that a jury or a court
13 is going to acknowledge as the predicate for punitive damages
14 or you don't. But there's nothing about the bankruptcy that
15 relates to whether or not an independent claim against New GM
16 is entitled to punitive damages or not.

17 To us, it's a fairly simple and non-nuanced issue.
18 Independent claims can proceed, subject to a court and a jury,
19 on compensatory and, if appropriate, punitive damages so long
20 as the punitive damage component or the compensatory damage
21 component, for that matter, does not rely on conduct of Old GM
22 or otherwise disguised as a successor liability issue.

23 Your Honor, in terms of triaging for our particular
24 issues, we would think that, first and foremost, we get marked
25 pleadings from GM where they tell us where in the second

1 amended consolidated complaint, or for that matter, in Arizona
2 or California, the plaintiffs have somehow impermissibly
3 crossed the line and are asserting something other than
4 independent claims or attempting to disguise their complaints
5 as successor liability complaints. Once we've done that -- and
6 again, Your Honor, in terms of triage, we don't see it as that
7 long of a process -- the second amended consolidated complaint
8 was a matter of public record going back to June 12th.

9 There were allegations made by New GM with respect to
10 the second amended consolidated complaint and impermissible
11 crossing of the line into something other than independent
12 claims a long time ago. One would think that it wouldn't be
13 all that much of an effort requiring all that much time to mark
14 those pleadings.

15 Now, Your Honor, again, we have a tendency to merge,
16 in our own minds, the issue between marking up pleadings and
17 then providing commentary on the marked-up pleadings and then
18 briefing. And I agree with Your Honor that if someone shows
19 you a set of marked-up pleadings and are able to give you a
20 commentary with regard to those allegations that New GM
21 believes crosses the line and renders them no longer
22 independent claims but something else, then subject to our
23 right to comment on those markups and tell you why they don't
24 cross the line, I don't see that as being legal briefing. I
25 see it as being a debate over whether or not specific

1 allegations or causes of action or background facts constitute
2 an impermissible attempt to hold New GM liable on the successor
3 liability theory as opposed to an attempt to hold GM liable for
4 its own independent conduct or failure to act.

5 And in terms of triage, I would suspect that the
6 right way to go is start with the marked-up pleadings and their
7 annotations, which I view as being difficult to do in a
8 simultaneous fashion as Your Honor's preliminary seemed to
9 indicate because we don't know what portions of the complaint
10 or complaints New GM contends with specificity --

11 THE COURT: Pause, please, Mr. Weisfelner, because I
12 was bouncing back and forth. I was thinking of a simultaneous
13 on punitives, but I understand why you would need to see the
14 marked pleadings before you responded to them.

15 MR. WEISFELNER: Okay. And again, Your Honor, I
16 don't want to interfere, as Mr. Weintraub correctly stated, the
17 bellwether trials that are pending before Judge Furman are the
18 bellwether trials that relate to personal injury or wrongful
19 death, and my commentary doesn't relate to that. I agree that
20 because those trials are coming up, the parties and Judge
21 Furman need to know whether or not requests for punitive
22 damages are violative of Your Honor's prior directives.

23 So I don't want to take away from the need to
24 prioritize that issue, but for all of our issues -- and they
25 include punitive damages but don't have the same timing concern

1 because we don't have bellwether trials that are scheduled -- I
2 believe that the right way to proceed, and I'll explain in a
3 little bit more detail, you go through the laundry list of
4 other matters that GM identified. I think it's in Paragraph 6
5 of their letter to you. I think you don't get into those
6 issues, get into the legal briefing of those issues, unless and
7 until you've had a determination by this Court that what we're
8 talking about are independent claims or aren't independent
9 claims.

10 And not to repeat myself, but to go quickly and then
11 get into the next issue, on punitive damages, if it's not an
12 independent claim, then by definition, you can't pursue
13 punitive damages. You can't pursue any damages. Conversely,
14 if it is an independent claim, there is nothing in Your Honor's
15 decision or judgment, or for that matter, the original sale
16 order injunction, that, in our view, could potentially prohibit
17 someone on an independent claim from pursuing both compensatory
18 and, if a court determines appropriate or a jury determines
19 appropriate, ultimately punitive damages.

20 THE COURT: Is that another way of saying it's your
21 side's position that if it is an independent claim, that pre-
22 petition -- excuse me, pre-sale conduct by Old GM would be
23 relevant to such a otherwise independent claim?

24 MR. WEISFELNER: Marginally. Again, I'm not a trial
25 counsel nor can I possibly predict how that trial would ensue,

1 but it seems to me that the starting predicate is you need to
2 convince this Court that what you've alleged and what you
3 intend to prove is an independent claim as Your Honor has
4 defined it. And if the plaintiffs are successful in convincing
5 Your Honor that these are independent claims, frankly, I think
6 the inquiry on the permissibility of punitive damages comes to
7 a stop.

8 All Judge Furman would need to know whether or not
9 punitive damages are an element of the claim is for Your
10 Honor's gatekeeping role to be satisfied to say, Judge Furman,
11 these are independent claims, having determined these are
12 independent claims, it's now up to you whether or not they can
13 ultimately prove the predicate compensatory damages against New
14 GM and are entitled under non-bankruptcy law to punitive
15 damages from New GM based on New GM conduct, not Old GM acts.

16 Now, Your Honor, again, I think many of us have
17 struggled with the dividing line between New GM's failures or
18 New GM's actionable conduct and Old GM since much of what the
19 economic loss plaintiffs complain about have to do with what
20 New GM did or didn't do with respect to Old GM vehicles or
21 parts. As Your Honor laid out in Footnote 16 in the Bledsoe
22 action, the mere fact that we're talking about an old part or
23 an old vehicle doesn't get New GM off the hook with regard to
24 its own independent obligations, whether by common law or by
25 statute, be they state or federal.

1 But again, as a gating matter, we think that Your
2 Honor's role, again at least as it relates to the economic loss
3 claims, is to, first and foremost, determine has the second
4 amended complaint, has the State of California and the State of
5 Arizona asserted independent claims, yes or no. And if they
6 have, then at least as to the punitive damages, we think the
7 issue is resolved.

8 And if I can go through the rest of the list of what
9 New GM has asserted are the other issues that the Court has to
10 consider --

11 THE COURT: From Mr. Steinberg's August 26 letter?

12 MR. WEISFELNER: Yes. You've heard Mr. Weintraub
13 deal with economic losses on the post-sale accidents and
14 incidents, and I don't need to elaborate on that. It's not
15 part of my bailiwick.

16 The proof of claim issue, this is a common cause of
17 action, as I understand, the bulk in the Adams complaint and in
18 the second amended consolidated complaint. In other words, the
19 gravamen of the claim is that New GM's independent failure to
20 provide a recall when it knew a recall was required and its
21 other conduct amounting to fraudulent concealment was
22 responsible for plaintiff's failure to file timely proofs of
23 claim.

24 As a consequence, the complaints allege, in one way,
25 shape, form or another, that in light of Your Honor's equitable

1 mootness finding, which, subject to appeal, basically tells all
2 of us that we will not be able to go back and claw back, for
3 lack of a better term, against the existing GUC Trust
4 beneficiaries. So what the complaints say is, your failure to
5 give us the information that was in your exclusive possession,
6 causing us not to file proofs of claim, damaged us to the
7 extent that we were not lined up with every other plaintiff as
8 part of -- or every other claimant as part of the proof of
9 claim universe, that we were denied the opportunity to
10 participate from dollar one in the GUC Trust.

11 Now, that's a claim that Your Honor is, I guess,
12 being asked to determine, and we think it's a failure
13 straightforward question. Is that a claim against Old GM or is
14 it a claim against New GM? We assert that it's a claim against
15 New GM. We're saying that New GM's failure -- from the time it
16 became New GM up through and including the bar date is the
17 focus of our attention -- is a claim solely against New GM.
18 The beginning and the end of the allegations is New GM knew on
19 the date it came into existence that there was an ignition
20 switch defect, what its potential was, that it needed to be
21 recalled as a matter of federal law, that it failed to do so
22 and it failed to do so purposefully, thus preventing the
23 plaintiffs from filing proofs of claim. And a court can
24 determine whether or not that's a cognizable claim, and if it
25 is, what the element of damages ought to be.

1 THE COURT: Now, pause again. When you said the
2 court in that last context, you were talking about Judge Furman
3 after I have done my gatekeeping.

4 MR. WEISFELNER: Correct. Or in the case of the
5 state claims, the relevant courts that those state claims are
6 currently pending in.

7 THE COURT: And how would a state have standing to
8 assert a claim of that character?

9 MR. WEISFELNER: Well, again, to the extent that --
10 and I guess I've misspoke. To my knowledge, neither the State
11 of California nor the State of Arizona had that allegation
12 within their complaint. It's only a second amended
13 consolidated complaint.

14 THE COURT: Okay. But you're talking about in your
15 constituency, your vehicle owners, and their contention is that
16 if the recall had taken place in the gap period between the
17 sale and the bar date, your guys could have filed claims and
18 then they would have gotten the 25 or 30 cents, whatever
19 unsecureds got in the case.

20 MR. WEISFELNER: Precisely. That's exactly right.

21 THE COURT: All right.

22 MR. WEISFELNER: And again, Your Honor, to the extent
23 that New GM contends that somehow that claim isn't an
24 independent claim, is instead a disguised successor liability
25 claim, to the extent Your Honor needs briefing on that topic, I

1 guess we'll brief it. We'll comply with whatever Your Honor's
2 desires are in that regard. But it seems to me, again, a
3 gating issue is what part of the second amended consolidated
4 complaint, including this particular cause of action, do you
5 believe fails to satisfy independent claim status and why.

6 Next issue in Mr. Steinberg's letter was the
7 contention that state law consumer protection statutes related
8 to Old GM vehicles and parts are somehow improper. And Your
9 Honor, it's our contention that, again, as a gatekeeper, if you
10 determine that the claims, based on state law consumer
11 protection statutes or otherwise, relate to New GM and what New
12 GM did or failed to do as opposed to what Old GM did or failed
13 to do, that depending on the particular state consumer
14 protection statutes, they either give rise to a claim or cause
15 of action to be determined by the trial court or they don't.
16 And the role of the gatekeeper, Your Honor, is to determine
17 whether or not those particular allegations relying on state
18 consumer protection laws do or do not constitute independent
19 claims versus disguised successor liability claims.

20 Likewise, the next issue, failure to warn and duty to
21 recall an Old GM vehicle. It is New GM's position, which we
22 believe is a blatant attempt to re-litigate what Your Honor has
23 already decided, but it's New GM's apparent position now that
24 an allegation against New GM sounding in the nature of a
25 failure to warn or a breached duty to recall, if it involves an

1 Old GM vehicle, it's somehow prohibited. And, Your Honor, we
2 believe that New GM had an independent duty to warn and an
3 independent duty to recall, which it violated and did so in a
4 reprehensible fashion, giving rise to liability constituting an
5 independent claim against New GM. And if we need Your Honor as
6 the gatekeeper to once again tell us that's true,
7 notwithstanding what you said in April and then in June and
8 then at Bledsoe, so be it. We'll ask Your Honor to say it
9 again. An independent act or failure by New GM is actionable.

10 The next issue on the list is can you state a claim
11 based on Old GM conduct. I guess that's a lot more nuanced.
12 We don't believe that the definition of independent claim
13 permits one to seek relief predicated solely on Old GM conduct.
14 That would seem to us to be on the wrong side of the definition
15 of independent claim and instead constitute a disguised
16 successor liability action. But we firmly believe that the
17 second amended consolidated complaint is based on New GM
18 conduct, New GM independent failures and independent conduct.

19 The issue of knowledge imputation is next on the
20 list, and I, Your Honor, think I agreed with Your Honor's
21 tentatives that Your Honor has already spoken on that issue.
22 And I'm not sure I fully understand the question as it's been
23 posed by New GM, whether or not the knowledge gained by New GM
24 on the day it was born, or by its employees rather, can be
25 imputed to the corporate entity. Again, we would have thought

1 that not much more, if anything, needed to be said by this
2 Court on that issue, but if somehow New GM believes outside of
3 the context of reargument or outside of the context of issues
4 that are up on appeal, that it has something specific and new
5 to say with regard to knowledge imputation, we're willing to
6 hear it and, if necessary, brief it. I think what Your Honor
7 said with regard to findings of fact, because New GM alleged
8 that we were misusing the Court's findings, are not to be
9 applicable, and Your Honor, I did say that, that nothing in
10 your decision was to be applicable in any other court,
11 including the MDL.

12 But, Your Honor, I think we all know the difference
13 between stipulations, the effect of stare decisis versus res
14 judicata, and I think it's easy for a court trying a specific
15 complaint to determine the extent to which the stipulations
16 will be binding on the parties or the extent to which it will
17 have to engage in its own independent fact finding as to
18 knowledge and imputation. So again, in terms of triage, we're
19 hard pressed to understand why that's an issue that, as a
20 gatekeeper, Your Honor necessarily needs to be involved in.

21 I'm coming down to the last two issues before I get
22 to some more general issues that GM raised. GM continues to
23 make the argument that the second amended consolidated
24 complaint contains allegations on behalf of plaintiffs that
25 were plaintiffs in the amended complaints. And somehow, they

1 argue that having been plaintiffs in the --

2 THE COURT: You used the word "amended complaint."

3 Do you mean pre-petition accidents or pre-petition purchasers
4 who are claiming -- I keep saying "prepetition," I mean pre-
5 sale, who are complaining of alleged post-sale injury?

6 MR. WEISFELNER: The latter, Your Honor. It's GM's
7 contention that if we have named the same plaintiffs in the
8 second amended consolidated complaint as were named plaintiffs
9 in the now amended economic loss category of pre-sale
10 plaintiffs that somehow they ought to automatically be
11 dismissed. And again, we don't know where that contention
12 comes from.

13 Again, we get back to the basic either the
14 plaintiffs, each and every one of them or any of them have or
15 have not succeeded in pleading independent claims, in which
16 case they can go forward, or they failed to plead independent
17 claims in any way, shape or form, in which case they're not
18 going forward. And to the extent that Your Honor's prior
19 decisions weren't, to GM's satisfaction, clear enough, then
20 you're being asked, I guess, to look at the specific
21 allegation, the specific complaint, and determine whether or
22 not we've crossed the line into a disguised successor liability
23 action or whether or not we've complied with Your Honor's prior
24 determination and have, instead, set forth actionable
25 independent claims.

1 Last and finally before I get to some of the larger
2 issues, when New GM lists other matters it now wants the Court
3 to consider and, in our view, reconsider, they want you to
4 determine that any allegations relating to brand diminution
5 based on New GM actions -- they're saying anything that you've
6 complained about that sounded in the nature of brand diminution
7 have to be a disguised successor liability claim.

8 And again, we think when Your Honor goes through the
9 complaint, the second amended consolidated complaint, with the
10 benefit of New GM's markups and annotations and with the
11 benefit of our responses to their markup and annotations, you
12 will be able to determine quite readily that our complaint
13 regarding brand diminution is a complaint based on New GM's
14 actions and New GM's failures to act. And our allegations
15 regarding brand diminution do not rely on, are not predicated
16 on, Old GM conduct.

17 Now, Your Honor, there are other -- or at least two
18 other overriding concerns, and they relate in no small measure
19 to non-ignition switch defect plaintiffs. I'll take them one
20 at a time.

21 Your Honor made its ruling -- made his ruling
22 regarding equitable mootness, and that decision is up on appeal
23 before the Second Circuit, and as Your Honor knows, Judge
24 Furman has directed the parties to seek an expedited appeal.
25 Your Honor's determination with regard to equitable mootness

1 was, by definition, applicable to folks other than the
2 non-ignition switch plaintiffs. Nevertheless, it seems to us
3 that the GUC Trust is probably correct that the rationale
4 underlying Your Honor's equitable mootness decision would apply
5 with equal force to the non-ignition switch plaintiffs. And in
6 fact, your procedures under the judgment, the 17-day business
7 about filing procedure, would have given the non-ignition
8 switch plaintiffs all of the due process that could reasonably
9 be afforded them on the issue of applicability of Your Honor's
10 equitable mootness ruling as to them.

11 THE COURT: Pause, please. I don't remember whether
12 it was in this context -- I think it was -- but I talked about
13 it's not res judicata, but it's stare decisis, and this would
14 convert it from being stare decisis to res judicata if, after
15 an opportunity to be heard, I came to the same view.

16 MR. WEISFELNER: I think that's right. And, Your
17 Honor, it seems to me that the only thing that needs to be
18 preserved -- and I think it's already preserved, but just to
19 draw upon line under it -- in this court and in any other court
20 is it is our position that with regard to ignition switch
21 plaintiffs and non-ignition switch plaintiffs, the problem we
22 had with Your Honor's equitable mootness decision is the
23 failure to take into account the remedy that could be crafted
24 or created that would, on the one hand, provide a remedy to the
25 plaintiffs, and on the other hand, wouldn't provide a detriment

1 or an impermissible detriment to the GUC Trust beneficiaries.
2 And I'm referring to two things. One is the accordion feature.
3 And by the accordion feature, I mean that part of the plan
4 going back to '09 that provided that if claims against the GUC
5 Trust were to exceed a certain threshold -- I think it's \$35
6 billion -- then and in that event, New GM would be required to
7 contribute I think by now, it's 30 million shares of New GM
8 stock.

9 I think it's crystal clear from the review of the GUC
10 Trust disclosures that there is no reasonable chance, there's
11 no chance, that the claims against the GUC Trust, as currently
12 constituted, can possibly reach the \$35 billion threshold. And
13 as a consequence, there is no opportunity to trigger the
14 accordion feature.

15 In our view, where the claims of the parties whose
16 due process rights were violated with regard to the bar date,
17 to be allowed to assert late claims, Your Honor's already
18 determined you can't claw back old value, but what we don't
19 think Your Honor determined or what Your Honor failed to take
20 into consideration was the availability of the accordion
21 feature. And if our claims count toward the threshold, we
22 believe we'll exceed 35 billion and may very well get to the
23 maximum amount of claims that would trigger the maximum number
24 of New GM shares. And in that regard, we believe that the
25 equitable mootness decision ought not apply to the accordion.

1 That's a subject for the appeal, we understand, but converting
2 stare decisis into res judicata, again, I don't think we're
3 going to contest any of that so long as everyone's rights with
4 regard to the accordion are preserved.

5 Likewise, as Your Honor knows, we have a hearing,
6 unless you've prevailed upon the GUC Trust beneficiaries to
7 change the date of September 22nd, wherein the parties were
8 going to present to Your Honor reasons for why the remaining
9 cash in the GUC Trust coffers, if you will, some seven or \$800
10 million, should or should not be distributed to the
11 beneficiaries before the appeal is resolved.

12 In the plaintiff's point of view, there is a huge
13 difference between going back to the beneficiaries, the GUC
14 Trust unit holders, and saying, you got your money and you got
15 it a long time ago and you've done whatever it is that you've
16 done with that money and you've engaged in whatever
17 transactions you've engaged in, too bad, you got 30 cents on
18 the dollar, you should have only gotten 15 cents on the dollar
19 if you included our claims, kick back half of what you've
20 already received. We think there's a big different between
21 doing that, which was the -- we believe, the subject of your
22 equitable mootness decision, as opposed to saying, you know,
23 there's another seven or \$800 million that's yet to be
24 distributed.

25 We don't want you distributing it unless and until we

1 work out a formula that says, we're going to make up for the
2 fact that the amount that you've already distributed didn't
3 include us, and now we're going to get a priority on this next
4 700 million in an effort to get us caught up.

5 And we think so long as that contention is reserved,
6 both for the ignition switch plaintiffs that were part of the
7 threshold issues and the non-ignition switch plaintiffs that
8 weren't part of the threshold issues, then we agree with the
9 GUC Trust beneficiaries that there is no need to embroil them
10 in the rest of the issues and that their concerns are separate.
11 And whether we go forward with the trial currently scheduled
12 for the 22nd or not, Your Honor, we're ready -- will be ready
13 to proceed in that regard.

14 Last issue, and then I will turn the mic over subject
15 to whatever questions Your Honor may have, and that relates
16 again to the non-ignition switch plaintiffs. And it focuses
17 back, Your Honor, on your determination that independent claims
18 can and should proceed against New GM notwithstanding the '09
19 sale order and injunction.

20 Our position is that the rationale that Your Honor
21 employed in determining that independent claims can proceed is
22 a rationale that ought to be applicable to non-ignition switch
23 plaintiffs as well, because it calls into question the
24 following proposition. May a buyer in a 363 sale -- putting
25 aside good faith or bad faith in connection with the sale

1 itself because we believe that New GM, in fact, engaged in bad
2 faith. It's one of the issues we will pursue on appeal. It's
3 one of the reasons why we think the bar against successor
4 liability ought not be enforced.

5 But putting aside good faith or bad faith, the
6 question is if you have a purchaser in a 363 sale, may the
7 bankruptcy court that approves that sale and gives the buyer
8 free and clear protections, including successor liability,
9 nevertheless afford the buyer prospective protection for its
10 own independent tortious conduct? And we think that the clear
11 answer to that proposition is no.

12 So again, if a non-ignition switch defect claimant,
13 whether would start an independent claim against New GM, would
14 that non-ignition switch plaintiff be successful, vis-a-vis
15 Your Honor as a gatekeeper. New GM's contention is that, aha,
16 wait a second, the non-ignition switch plaintiff cannot assert
17 an independent claim against New GM unless and until that
18 non-ignition switch plaintiff demonstrates that back in '09,
19 its due process rights were violated. Because Your Honor only
20 determined that independent claims were permissible having
21 first determined that the ignition switch plaintiffs' due
22 process rights were violated with prejudice because they didn't
23 have an opportunity to argue over breadth of the injunction.

24 So that's the last issue I can think of where we have
25 a marked disagreement between Mr. Steinberg and I. It's my

1 belief that Your Honor's determination that the law in the
2 Second Circuit, that the law across this country is uniform,
3 and that is that a buyer in a 363 sale, putting aside whether
4 or not it's acting in good faith, does not obtain a
5 get-out-of-jail-free card for its own post-sale tortious
6 conduct, bad actions, fraudulent concealment.

7 THE COURT: I understand the issue. Pause. If you
8 said this before in baby talk, I don't remember it. Are you
9 now going to be kind of a designated counsel for non-ignition
10 switch plaintiffs, as well --

11 MR. WEISFELNER: Your Honor --

12 THE COURT: -- or did they have separate counsel?

13 MR. WEISFELNER: They do not have separate counsel,
14 and to the extent that their rights need to be preserved, since
15 co-lead counsel in the MDL does have actions pending on their
16 behalf, subject, of course, to subsequent certification of
17 classes and that sort of thing, yes, we perceive ourselves as
18 having taken on the mantel of preserving and protecting the
19 rights of non-ignition switch plaintiffs in this court.

20 THE COURT: So I don't have to worry about them not
21 having been heard if I listen to you.

22 MR. WEISFELNER: I think that's a correct conclusion,
23 especially in light of Your Honor's procedures in the judgment
24 itself.

25 THE COURT: Okay. Continue or were you done now?

1 MR. WEISFELNER: Your Honor, subject to whatever
2 questions or concerns you have, I'd be done. I just want to
3 make sure that neither of my overseers, Mr. Berman or Ms.
4 Cabraser, have any further comments that they'd like to make.

5 THE COURT: Is Mr. Berman on the phone?

6 MR. WEISFELNER: I believe so.

7 MR. BERMAN: (Telephonically) Yes, Your Honor. I'm
8 on the phone. I think that he did a great job covering our
9 interests here.

10 THE COURT: I'm sorry, you're not very audible. Can
11 you say it slower and louder, please?

12 MR. BERMAN: I think that he's covered everything
13 well and I have nothing to add.

14 THE COURT: Okay. Mr. Stein --

15 MS. CABRASER: (Telephonically) Your Honor,
16 Elizabeth Cabraser.

17 THE COURT: Wait, I'm sorry. Before you come up,
18 Mr. Steinberg, I thought I heard something on the phone after
19 Mr. Berman said he had nothing to add.

20 MS. CABRASER: Your Honor, Elizabeth Cabraser,
21 co-lead for the economic loss plaintiffs. You heard me. I
22 apologize for not speaking more slowly. I'm simply concurring,
23 as is Mr. Berman, subject to Your Honor's (indiscernible). I
24 have nothing to add at this point.

25 THE COURT: Okay. I asked my questions as we went

1 along.

2 Mr. Steinberg.

3 MR. STEINBERG: Your Honor, on behalf of New General
4 Motors, we have no problem with triaging the cases -- the
5 issues that arise in connection with the bellwether cases. And
6 I think Your Honor and Judge Furman, on Friday, at the MDL
7 hearing, put his finger on the three issues that he needed most
8 to deal with. One of them is the punitive damage issue. The
9 second is what we've been calling here the imputation issue.
10 And the third is not necessarily marking up a complaint for
11 purposes of something that is ready to go to a trial, but are
12 the causes of action pled in those complaint that are otherwise
13 proscribed by Your Honor's 2009 sale order and your April
14 decision and your judgment. And we think we can address all of
15 those things and have those pleadings done in the month of
16 September.

17 We had set forth in our letter an accelerated
18 briefing schedule on the punitive damage issue. And to some
19 extent, based on Your Honor's comments today, I think we need
20 to deal, as the professionals, to try to figure out how to
21 address issues like number of pages to brief, how to present
22 something to give Your Honor something better than what we gave
23 to you last Wednesday. But vis-a-vis, the punitive damage
24 brief, in the context of the Bavlsik pleading, which we filed
25 on Friday, we essentially wrote the punitive damage brief that

1 we would have as our opening brief, tailored to the Bavlsik
2 case, but the generic issue as to whether the punitive damage
3 issue was an assumed liability for post-sale accidents for
4 pre-sale cars, and we think we've already briefed. So we could
5 be on an accelerated basis.

6 THE COURT: The assumed liability is potentially
7 capable of being dealt with in a way similar to the one you
8 did, but isn't that complaint that you were commenting on the
9 easier end of the spectrum because so much of the alleged bad
10 things that New GM did -- excuse me, that were done by the GM
11 without either an Old or New before it, were at least
12 seemingly, if not plainly, pre-sale actions?

13 MR. STEINBERG: Yes, Your Honor, but I think it's
14 actually the same with regard to all the bellwether cases. The
15 Shoyer (phonetic) complaint is over 112 pages. I think
16 probably 75 pages are cribbed from the second amended complaint
17 dealing with Old GM conduct. And I think a large part of what
18 you heard today was preliminary oral argument on the issues
19 that we're supposed to brief substantively, and while I'm
20 perfectly capable and willing if Your Honor is prepared to
21 entertain, I took today's hearing to be more procedural.

22 But I will point out that punitive damages versus
23 compensatory damages are two different things, and punitive
24 damages are directed for things unrelated necessarily to the
25 specific accident at issue, but more broadly to punish the

1 wrongdoer for bad conduct. You could have a circumstance where
2 Your Honor has determined punitive damages, as a general
3 matter, was not an assumed liability, but to the extent that
4 you're still seeking it based on Old GM conduct, that that was
5 proscribed by the sale order.

6 And so we believe that we can do the marked
7 pleadings. There's only six of them, and while one of them is
8 over 100 pages, they're not all 100 pages. What would actually
9 be helpful for us to deal with this is that they've already
10 admitted that they've pleaded beyond the sale order. They've
11 already included, as part of those bellwether complaints, in
12 effect, economic loss claims that are otherwise barred by the
13 sale order. And they've said in one of the footnotes to Your
14 Honor's letter that in at least two of the cases that they're
15 going to amend the complaint.

16 Well, they should have amended the complaint before
17 to not do what was proscribed by the sale order, but in order
18 to save time and to save Your Honor reviewing something, they
19 should get rid of the underbrush of what they're prepared to
20 concede right now is proscribed by the sale order, and then we
21 can comment on the amended complaint, and they should be able
22 to do that forthwith.

23 We will say that even though they've made the
24 concession for two of the complaints, that all six of the
25 complaints are violative of Your Honor's sale order. And

1 things like fraud in connection with the sale of a vehicle,
2 fraudulent concealment in connection with the sale of a
3 vehicle, consumer protection statutes under Oklahoma law,
4 Nevada law, all of which are barred by the sale order and they
5 should never have been included in the first place. And what
6 you have here is, I think, a side that is sort of tone deaf of
7 what Your Honor rules. Your Honor rules that something
8 shouldn't happen, they just do it anyway, and then they hope on
9 the second time, they get a better shot at doing it.

10 So vis-a-vis the bellwether complaints, they amend
11 whatever they think they know they did wrong. We'll take it on
12 face value and we'll go from there. We already have
13 essentially briefed the opening brief, and we could do whatever
14 we need to do on punitive damages on the reply brief.

15 I do agree to some extent with what Mr. Weisfelner
16 said, that is to the extent that it is a retained liability,
17 that punitive damages is not going to be relevant because
18 they're not going to be able to assert it. But beyond that, it
19 is more nuanced than on this issue, and I think the nuance will
20 be reflected by the marking up of the pleading, so that on
21 these bellwether cases, we'll be able to show that what they're
22 seeking for, for purposes of punitive damages unrelated to the
23 accident, designed to punish the wrongdoer, is based on Old GM
24 conduct and therefore should be eliminated from the pleading.

25 THE COURT: Pause, please, Mr. Steinberg. Sooner or

1 later, one of your hundreds of opponents is going to have a
2 claim, more likely an economic loss claim, I suspect, but
3 either way, where the bad things that are charged are going to
4 be things that New GM allegedly did bad after the sale, unlike
5 that one that you gave me in your recent notice of presentment.
6 Have you briefed that potential possibility to your
7 satisfaction or do you need to supplement your earlier brief to
8 do that?

9 MR. STEINBERG: I think, Your Honor, we're talking
10 about economic loss complaints. I do think, Your Honor, that
11 the issue that they have as their linchpin is the imputation
12 doctrine, and what we've said in our briefing, which, Your
13 Honor, I don't believe has ruled on at all, is that the devil
14 is in the detail on these imputation issues. There's not an
15 automatic imputation, and you have to look at the underlying
16 cause of action that is actually being pled to see whether it's
17 really -- not a disguised successor liability -- it could very
18 well be a disguised successor liability, but really whether
19 it's a retained liability unrelated to any independent conduct,
20 and this is all dressed up to be something else. And you need
21 to be able to see when they want to impute the knowledges,
22 whose knowledge for what purposes to establish what claim that
23 they assert as an independent claim. And that, they've never
24 done. They just paint this with a broad brush of general
25 phraseology.

1 And Your Honor, in your Bledsoe decision, you picked
2 out two examples that you said would clearly be something that
3 may be imputation. I actually don't think we disagree with
4 either of the two examples that you had in your Footnote 16.
5 One of them related to if we knowingly installed a part
6 post-sale that we knew that was defective. I think that that
7 probably is not something that we would bring before Your Honor
8 if that was the case.

9 And likewise, with refusing to repair something that
10 we knew that was -- that should have been repaired, which is, a
11 sense, a glove box warranty issue that we have in Castillo
12 where someone came in, should have been repaired, wasn't
13 repaired, and now they're looking for the repair remedy.
14 They're not looking for repair remedies, which is the glove box
15 warranty. They're looking for economic loss and economic
16 damage. That's something that's totally different.

17 So on the imputation doctrine, for example, when they
18 talk about a failure to recall, failure to warn, in the Burton
19 case, the judge -- Judge Bernstein decided on failure to warn.
20 He said that cause of action doesn't exist for economic loss
21 plaintiffs at all, and therefore he knocked it out in the
22 context of that case. One of the things that we will be
23 briefing on the imputation as it relates to the economic loss
24 plaintiffs is that cause of action doesn't exist.

25 So when you are asserting it against us, you don't

1 get the ability to assert a retained liability against us,
2 claim as an independent claim and ask another court to
3 determine maybe you're right. If it was a retained liability,
4 never should have been asserted against us in the first place.
5 That was the purpose of the injunction.

6 So we can brief the imputation doctrine quickly. To
7 some extent, Your Honor, you've seen the imputation briefing
8 already because -- I want to know why no one's mentioned it --
9 there was fully briefed the no strike pleading with regard to
10 the second amended complaint. There was that in the context of
11 that briefing. There was sections on the imputation doctrine
12 as to whether it should apply or not apply.

13 In the most recent thing that we filed on Friday on
14 the post-sale accident for Old GM vehicle, there's briefing on
15 the imputation doctrine, as well, too. And we cite maybe ten
16 cases that say there's not an automatic imputation, and we also
17 cite to Your Honor's opinion where you say you don't do it on a
18 whole-cloth basis.

19 The real problem is, is they've never articulated
20 what it is that stands up as an independent claim.
21 Mr. Weisfelner will talk about that New GM had a duty to recall
22 on the day that it came into existence, which meant that Old GM
23 had that duty to recall under his theory on the day before the
24 sale. And Old GM was in charge of a bar order and the issue of
25 getting a bar order and getting the notice approved. That was

1 not a New GM issue, and we'd claim that all of that is not
2 something that we assumed as part of the sale process, that
3 with regard to Old GM vehicles, the claims process that would
4 take place after the sale, that was something that we didn't
5 have a duty or responsibility for and no ongoing obligation at
6 all. That, we believe, was a retained liability, and that is
7 what we brief to you in connection with the economic loss
8 no-strike pleading and that is what we will brief to you on
9 September 3 in connection with the Adams lawsuit.

10 What I struggled with in writing the letter on August
11 26th is how to deal with a circumstance where I, in a sense,
12 briefed a lot of these issues to you already. They've briefed
13 a lot of these issues already to you. And when Your Honor
14 says, you don't need to give me another 50 pages, we could do
15 it much shorter by referencing that this subject is found in
16 the following pages in connection with pleadings already filed
17 and, for Your Honor's convenience, put it in an appendix so you
18 don't have to struggle and look for it, but you have a context
19 of the briefing. And anybody who wants to supplement beyond
20 with a greater thought process that they had when they briefed
21 these things can do it in a relatively short basis. And so we
22 don't have to do 50 pages.

23 But as Your Honor could see, when we did these
24 letters -- and as we said, we had two meet-and-confers and
25 there were particular agendas as to why one side wanted to put

1 it one way and one side put in the other way. And so while we
2 generally agreed to a briefing schedule and potentially page
3 limits, we didn't do it with the benefit of Your Honor's
4 comments today, and frankly, I didn't have the benefit of what
5 they put in. They had the benefit, essentially, of my opening
6 draft of what I was going to put in. And so I wasn't able to
7 really address that.

8 With regard to some of the other things, I frankly --
9 I could not follow what Mr. Weisfelner said about the GUC Trust
10 asset pleading other than an attempt to try to say where the --
11 I don't know -- multiple time, the same type of argument he's
12 making about equitable mootness in an effort to try to convince
13 Your Honor to rethink the issue. But they actually filed a GUC
14 Trust asset pleading. They opposed the relief that they now
15 are saying that they're potentially prepared to concede. So I
16 couldn't quite figure out did he make the concession or didn't
17 he make the concession.

18 I will bet you Ms. Rubin has no idea whether he made
19 the concession or not because if he was prepared to concede the
20 non-ignition switch plaintiffs should be treated the same for
21 purposes of Your Honor's equitable mootness finding, then that
22 was what they asked to have briefed on the GUC Trust asset
23 pleading. That is what they asked to have removed, to have
24 Judge Furman to do in their motion to withdraw the reference,
25 and that is what they said in their own letter Your Honor

1 should decide and there's no need for further briefing. So did
2 they go further and basically take the issue off the table so
3 that Your Honor doesn't have to deal with it or not? I
4 actually don't know.

5 The other thing that I actually don't know is that --
6 well, Your Honor asked the question, are you speaking on behalf
7 today of the non-ignition switch plaintiffs? Mr. Weisfelner's
8 been designated counsel for that group for purposes of briefing
9 the four threshold issues and for purposes of the oral
10 argument. That has never changed. That has always been his
11 role in this case. The --

12 THE COURT: I thought that Mr. Weisfelner had said in
13 some footnote to one of his briefs that because the
14 non-ignition switch guys hadn't gotten the same level of
15 discovery and stipulation crafting that the ignition switch
16 guys had, that he didn't understand that non-ignition switch
17 guys would be dealt with in the four threshold issues.

18 MR. STEINBERG: No, Your Honor. I think what --
19 where the confusion is, is that we had stipulated facts with
20 regard to their earliest recalls, which only dealt with the
21 ignition switches, and that they said that there was no
22 discovery that was needed further with respect to anything
23 else. And therefore, they were asking Your Honor to decide the
24 four threshold issues with regard to that stipulated factual
25 record.

1 There was no stipulated factual record that had been
2 developed for the non-ignition switch plaintiffs. So he was
3 saying that, to the extent that I need more discovery, I need,
4 on behalf of that group, more discovery on -- for the
5 non-ignition switch plaintiffs to show the same level that
6 there was a due process violation with respect to the sale
7 order as it applies to that group of people.

8 So he always represented the group. He was just
9 saying, I didn't have the level of discovery, which is why Your
10 Honor's judgment said that that non-ignition switch group is
11 bound on a stare decisis basis. They have the ability to file
12 a no strike pleading if they want to show that they shouldn't
13 be bound on a collateral estoppel basis. And the fact of the
14 matter is, they did do that. They filed whatever it is that
15 they wanted to file. And our argument was, is that they have
16 the same problem that the ignition switch plaintiffs have, that
17 even if there was a due process violation, there was no
18 prejudice to them because those arguments were made already in
19 the context of the sale hearing. So there was no due process
20 violation and they otherwise should be bound.

21 And, Your Honor, we briefed that issue to you, as
22 well, in the context of the no strike pleading. If he's
23 prepared to withdraw that, that's fine. But Your Honor's order
24 asking us to write something in the letter with regard to the
25 non-ignition switch plaintiffs was to address the issue as to

1 how do we deal with the fact that we don't have a stipulated
2 factual record for the non-ignition switch plaintiffs, and
3 therefore, how do they show that they have a due process
4 violation. Because otherwise, the sale order is clear -- I'm
5 sorry, the decision was clear, the sale order was not amended
6 to them. The sale order was only amended for purposes of
7 asserting independent claims that would otherwise be proscribed
8 by the sale order and injunction for the economic loss ignition
9 switch plaintiffs and no one else.

10 So how did they get to that -- to have the same
11 level? They had to do something more, they hadn't done it.
12 Our letter says, tell the Court what it is that you want to do
13 because otherwise, you're bound. Mr. Weisfelner basically said
14 today, I'd rather not do anything and just get the same
15 benefit, and they're not allowed to do that. They need to show
16 that there was a due process violation, that there was, I
17 guess, sufficient knowledge of Old GM so that they would have
18 been deemed to have been a known creditor for purposes of doing
19 something more with respect to those particular issues, not the
20 ignition switch issue. And he hasn't done that or said what
21 he's prepared to do on that.

22 The issue on what we had put in our letter -- and I
23 think Your Honor has the benefit of the letter -- we were
24 flagging the issues, Your Honor, that had already been raised
25 and partially briefed to Your Honor were ready. So we weren't

1 trying to raise anything new or to do something. We were
2 saying to Your Honor, here are those issues, if we wanted to
3 argue that vis-a-vis an economic loss plaintiff, that there was
4 no duty to warn because we didn't take the warranty liability
5 at all. We left behind everything related to an Old GM vehicle
6 other than the glove box warranty, the lemon law
7 responsibility, or if that car had gotten into an accident.
8 Everything else was left behind. We weren't going to deal with
9 it anymore.

10 That's our construct. Your Honor had said that if
11 there's an independent claim that would otherwise be proscribed
12 by the sale order, that I'm going to allow that to be heard.
13 Now, to some extent, if there's an independent claim that
14 exists whether the sale order said something or not, I don't
15 think that is a quarrel that New GM has, provided that there's
16 an agreement as to what that is. And I think the concept of
17 the marked pleadings will develop that.

18 What Mr. Weisfelner cavalierly says that we've had
19 the benefit of the second amended complaint since June and
20 therefore it should be easy to mark it up, I don't know if Your
21 Honor realizes that the second amended complaint is over 1,200
22 pages.

23 THE COURT: I'm aware of that. I'll tell you I
24 haven't read 1,200 pages. I am not even sure if anybody's
25 tried to lift that for me and stick it on my desk.

1 MR. STEINBERG: So the --

2 THE COURT: But I have heard that it's 1,200 pages.

3 MR. STEINBERG: So --

4 THE COURT: I assume that there are not 1,200
5 paragraphs that I need to focus on.

6 MR. STEINBERG: No, but if -- Your Honor, if I told
7 you there's probably 60, 70 pages that all deal with Old GM
8 conduct and Old GM allegations, I don't think you would be
9 surprised. You know, I'm not going to. I will resist the
10 temptation, only to say that we flagged the issue in our
11 letter, that we think that when you entered the judgment and
12 you said that the pre-sale consolidated complaint would be
13 stayed and they took all the pre-sale consolidated plaintiffs
14 and they put it into their post-sale complaint, and then they
15 essentially try to dress up how they were going to allege the
16 same thing over again, that that was violative of Your Honor's
17 judgment.

18 We will brief -- we briefed that issue in the context
19 of the second amended complaint. We briefed the issue on the
20 damage issue and the second amended complaint. To the extent
21 that we think that they're saying something more than we need
22 to brief, we'll try to do --

23 THE COURT: When you said the damage issue, did you
24 mean punitive damages or something different?

25 MR. STEINBERG: Something different. Their second

1 amended complaint basically tries to get a recovery for every
2 vehicle owner that owned an Old GM car or a New GM car as of
3 2009 whether that Old GM vehicle owner actually ever had their
4 car recalled. Their complaint in their addendum is for 70
5 million vehicle owners based on a theory. We believe that the
6 theory -- and it's not to be phrased as only if you're a
7 successor liability. We actually had that argument in the
8 context of the form of the judgment. If your claim is based on
9 something that would be proscribed by the sale order because it
10 relies on Old GM conduct, it's barred.

11 And we believe that that damage theory, as it relates
12 to Old GM vehicle owners, is barred. You can't sue New GM
13 under whatever theory you could dream of for an Old GM vehicle
14 that you say value diminished from the time that Old GM sold
15 the car to that vehicle owner in 2004 and 2005. No matter what
16 they're alleging, that's a retained liability.

17 And that's what we're asking Your Honor to do, that
18 they studied Your Honor's ruling very hard. They studied how
19 to try to circumvent Your Honor's 2009 order very hard. And
20 we're saying we want to expose the bright light on what they're
21 doing and they should be told to stop it as they have done
22 throughout, not just in the MDL court, but in various other
23 state courts, as well. We need to put a stop to it, and that's
24 what this -- we took Your Honor's letter to say, give me
25 everything I need to do to finish this, what are the issues

1 that I need to tackle, and that's what we're trying to do.

2 The -- so we're prepared to -- I will say one other
3 things on the states. The states didn't file separate briefs
4 for the four threshold issues, but if you actually review the
5 briefing that was done in connection with the four threshold
6 issues and the oral argument, you will see that designated
7 counsel picked up some of the (indiscernible) for the states
8 and tried to present their argument. Mr. Esserman, at the oral
9 argument, tried to put forth the state's position, and in
10 footnotes that they try to argue the California Consumer
11 Protection Statute, which underlies the state causes of action.

12 Your Honor should realize -- and I'm not quarreling
13 that we shouldn't be flexible enough to change course, but Your
14 Honor should realize that the states flouted what Your Honor
15 said should be done. Your Honor had already said in the
16 context of the form of judgment decision that they should amend
17 their complaint, otherwise they're going to be stayed. Now, in
18 the context of this letter, you're saying, let's start over
19 again, tell them specifically why they should be stayed and
20 I'll rule.

21 Your Honor had already ruled that what they had done
22 was wrong. They tried to go to Judge Furman to get around
23 that. Judge Furman said, you've got to come back before Your
24 Honor. One easy way to deal with the states so you don't have
25 the briefing is saying, you lost your opportunity, you didn't

1 amend when you were supposed to amend, you're stayed until the
2 four threshold issues are determined by the Second Circuit.
3 What they're getting here is the benefit of a redo because they
4 didn't do what they were supposed to do before.

5 If Your Honor wants to streamline something easy, you
6 should streamline the states and say there's no reason to
7 bother to deal with them at all because they lost their
8 opportunity to do a no strike pleading, they did -- whatever
9 they did on the no strike pleading, I have in front of me, but
10 they didn't amend and they were supposed to amend. And
11 therefore, you knew what you were doing when you didn't amend,
12 you now -- you took your shot at Judge Furman, you lost, and
13 now you might as well understand that you're stayed until the
14 Second Circuit rules, and I don't have to deal with this again.

15 I will say, though, that even if you took that tact,
16 some of the things that we are briefing that we will need to
17 brief are the hybrid lawsuits, right, because there's some
18 aspects of the states' lawsuits that should go forward. It's a
19 hybrid lawsuit. It deals with not just Old GM vehicles, it's
20 New GM vehicles, too. They just didn't plead it right and they
21 didn't care when you told them, you didn't plead it right. And
22 so they have to -- we have to deal with the hybrid lawsuits
23 anyway on the consumer protection statutes.

24 We briefed that a little in connection with the
25 second amended complaint. We actually briefed that issue to

1 some extent, both sides did, in context of the Old GM threshold
2 issue as part of the four threshold issues. We had to write
3 briefs as to whether what was pled, not in the second amended
4 complaint, but the first amended complaint, whether that was
5 violative of the sale order. We had sections of our brief
6 dealing with fraud, fraudulent concealment, misrepresentation,
7 California statute. They tried to put in whatever they wanted
8 to do. We actually briefed more of it than they did. And now
9 we're doing it again because Your Honor ruled they it in a
10 general fashion, but really the proof is in the pudding. That
11 proof is in the pudding when you put in 1,200 pages. We have
12 to tell you, and we have to do it in a way, Your Honor, that
13 makes sense.

14 One of our exhibits showed that we tried to deal with
15 the stare decisis collateral estoppel. We have 80 separate
16 actions, all have accidents in the state court, not bellwether
17 cases, not in the MDL, Bavlsik is one of them where there's the
18 punitive damage issue. Frankly, Your Honor had the punitive
19 damage issue in front of you six weeks ago. The Walton no
20 strike pleading actually had the -- that whole no strike
21 pleading was the punitive damage issue. The fact of the matter
22 was is that Your Honor lost that opportunity and New GM lost
23 that opportunity to get clarity on that issue because Walton
24 decided to withdraw its request for punitive damages.

25 THE COURT: That was a post-petition accident with

1 bases for punitives premised on pre-sale conduct?

2 MR. STEINBERG: Yes, Your Honor, and it was a pre-
3 sale vehicle. It's the same issue as what's in the bellwethers
4 right now.

5 THE COURT: Uh-huh.

6 MR. STEINBERG: It was a -- I mean, the brief that we
7 filed on Friday has many similarities to the Walton brief that
8 we filed. So, Your Honor, I could go on, but I think today's
9 not the day for a tit-for-tat for me to try to refute
10 everything that everybody else said. Your Honor's looking for
11 a procedure how to go forward. I think we can deal with all
12 the bellwether issues in September. We could do the marked
13 complaints for the bellwether issues, but I do think that they
14 should mark up -- they should eliminate that which they know is
15 violative of the order so that we're not having to mark up
16 something further than that.

17 And then, I think we can agree on a briefing
18 schedule. We had asked for an accelerated briefing schedule.
19 I think in our context, we had said that we can do opening
20 brief by this Friday. I think, frankly, if Your Honor wanted
21 to deem my Bavlsik pleading to be the opening brief and give me
22 a --

23 THE COURT: Opening brief on --

24 MR. STEINBERG: Punitives.

25 THE COURT: -- on punitives by next Friday?

1 MR. STEINBERG: Well, I had it -- in my briefing
2 schedule, I had it for this Friday, September 4th. We're
3 already into September as of tomorrow. And then I had given
4 them to, I think, September 16th or something like that, and --

5 THE COURT: Well, September 16th is a little elusive,
6 not just for the most religious people in the New York
7 community, but for --

8 MR. STEINBERG: Yeah.

9 THE COURT: -- a lot of people --

10 MR. STEINBERG: I think September 18th.

11 THE COURT: -- because it covers two days of holiday
12 for a lot of people.

13 MR. STEINBERG: Your Honor, I didn't care. If they
14 thought they needed a few extra days, I didn't care about any
15 of that. I wanted to do something that reflected two things.
16 One is I didn't even know -- I knew that there was a bellwether
17 issue out there and Judge Furman would give us clarity on that,
18 but when I wrote this letter, I didn't have the benefit of his
19 remarks on Friday.

20 THE COURT: From this past Friday.

21 MR. STEINBERG: From this past Friday. But I knew I
22 had to deal with this issue on an expedited basis because of
23 cases like Bavlsik. Right? I have Bavlsik scheduled to go to
24 trial in Missouri, in a Missouri court, in middle of September.
25 And so on Friday, when we filed our no strike pleading with

1 Your Honor, my counsel in Missouri filed a pleading asking for
2 an extension of time so that Your Honor could deal with the --

3 THE COURT: Where do we stand on that? Because no
4 matter how much I accelerate, I can't get it done by September
5 4th.

6 MR. STEINBERG: I agree with that, so we recognized
7 that it would be hard to try to force this issue into today's
8 status conference. And so the return date on the request for
9 an extension from the Missouri court is this coming Friday,
10 September 4th. If we don't get the relief that we need by
11 September 4th, we may very well try to tee up something before
12 Your Honor to try to preserve the status quo so that Your Honor
13 has the benefit of all the briefing.

14 THE COURT: In the nature of a TRO?

15 MR. STEINBERG: In the nature of a TRO. This has
16 been done -- Judge Furman has had to tackle this type of issue
17 in connection with coordinating the state cases, and many a
18 times, he's able to speak to the state court judge there and
19 say, this is what I need, and the papers that we filed on
20 Friday basically said that we expect the punitive damage issue
21 to be resolved in two to three months and that we're asking for
22 an extension of the trial date so that it goes forward in that
23 period of time.

24 So we were guided by cases like Bavlsik, and there
25 may be other cases like that, whether it's not September 15th,

1 but it's October 10th, October 30th. We were guided by that.
2 Frankly, we thought Walton might have given us the clarity that
3 we needed to go forward, but you don't go forward on an action
4 when the other side says, I capitulate. You tell the judge
5 that they capitulated so he doesn't have to write a decision on
6 it.

7 And we know that could be fair to the other side,
8 that they will wanna weigh in on this issue, as well. To the
9 extent that they didn't weigh in on Walton, they didn't weigh
10 in on Walton, but we know now that they want to weigh in on the
11 other -- for the other cases. So we try to set up this
12 accelerated briefing schedule, and we did believe that if
13 everything is done in September, Your Honor will be able to
14 tackle the issue quickly and give Judge Furman and the other
15 judges the guidance that they need so they know how to go
16 forward in their cases.

17 So on the bellwethers, we're committing to do the
18 markup of the six complaints and we're prepared to do the
19 briefing, whatever works, on the punitive damage issue. And if
20 they want to have oral argument, I'm not shy to have an oral
21 argument if Your Honor believes an oral argument is required.
22 If it does, then I'm happy to do the oral argument whenever
23 Your Honor wants to do it. And that will address Judge
24 Furman's concerns on the bellwethers.

25 The rest of what's involved here, marking up of the

1 pleadings and how to deal with the economic loss cases, I
2 almost think, Your Honor, that we need the benefit of perhaps
3 another discussion amongst the group to see what kind of
4 schedule we should put forward and how to present it to you
5 with the benefit of your comments. If the people think that we
6 should just do it all now, I guess we could do it now and I
7 could give you my thoughts on the fly, but I do think that
8 everybody heard you say the briefing was too long and the
9 timing is too long and you need to have that done quicker.

10 We have to deal with the fact that we're being asked
11 to mark up a 1,200-page complaint. We're being asked to mark
12 up complaints that otherwise are stayed right now, we believe,
13 but to try to get greater clarity. And to some extent we're
14 interested in greater clarity, as well, too, at some point in
15 time. We're not dilatory. We actually want Your Honor's
16 ruling so that it can then set the table for what should happen
17 next. A large part of the delay has been a fight over whether
18 you should be the gatekeeper that you were intended to be in
19 2009.

20 So I hope that is responsive enough to what was said
21 before I took the podium. I obviously have other responses to
22 other things, but I disagree with when people tried to argue
23 substance because I just don't think Your Honor has the desire
24 to hear substantive arguments as to why we think our legitimate
25 -- these are legitimate things to raise to you. You'll get the

1 benefit of our briefing, and there will come a day when I'll be
2 able to give the oral substance response to that. Thank you.

3 THE COURT: All right. Thank you.

4 Ms. Rubin.

5 MS. RUBIN: Thank you, Your Honor. I'm Lisa Rubin of
6 Gibson, Dunn & Crutcher for the record. I represent the GUC
7 Trust, and I'm here this morning on behalf of the GUC Trust and
8 the unitholders. Mr. Golden of the Akin Gump firm is also on
9 the phone, and I expect that if he has anything to add at the
10 conclusion of my presentation, Your Honor, he will ask for an
11 opportunity to address the Court briefly.

12 Your Honor, you said at the outset of your comments
13 that you wondered whether it made sense to push off what you
14 recognized were the independent issues facing the GUC Trust.
15 And respectfully, Your Honor, I would say no, and here's why.

16 All of the parties before you agree that the issues
17 presented by the GUC Trust asset pleadings are very limited
18 ones. They're issues that the judgment asked the parties to
19 put before your Court, and specifically Paragraph 13(d) of the
20 judgment required that if any party who was not affected by the
21 judgment, specifically the two categories, non-ignition switch
22 plaintiffs, if they had a good-faith basis as to why Your
23 Honor's equitable mootness holding and the April 1st decision
24 should not apply to them, they should set that forth in a GUC
25 Trust asset pleading.

1 THE COURT: This goes for the purpose of converting
2 what is now stare decisis into res judicata. Am I correct?

3 MS. RUBIN: Yes. Yes. And, Your Honor, you
4 recognized in a May 27th decision to explain some of the
5 decisions you made about the judgment where there were
6 disagreements before the parties. You said specifically as
7 follows -- and if you'll excuse me, Your Honor, I'm reading
8 from my Blackberry from your decision -- at Page 8 of that
9 decision, you said:

10 "The decision will be stare decisis for the non-
11 ignition switch plaintiffs subject to the usual right
12 of any litigant to show that a judicial opinion is
13 distinguishable, but it will not be res judicata."

14 Your Honor then continued:

15 "The Court agrees with New GM, the GUC Trust, and the
16 unitholders that it is time to come to closure on
17 whether there is any basis to excuse the non-ignition
18 switch plaintiffs."

19 And by that, I believe Your Honor meant two
20 categories of non-ignition switch plaintiffs, the non-ignition
21 switch plaintiffs with economic loss claims represented by
22 Mr. Weisfelner and the non-ignition switch plaintiffs with
23 personal injury claims represented, as I understand, by
24 Mr. Weintraub, from the provision of the sale order, that's not
25 something that I'm here to discuss, and the Court's mootness

1 conclusions. That's the thing I am here to discuss.

2 And that's what Paragraph (d) of the judgment was
3 designed to do. It gave the parties 17 business days after the
4 entry of the judgment to come forward and say what their
5 good-faith basis was for why that equitable mootness holding
6 should not apply to those two categories of non-ignition switch
7 plaintiffs.

8 And then you had two pleadings come in, Your Honor.
9 You had designated counsels' omnibus motion, which included
10 their GUC Trust asset pleading, and then you had what
11 Mr. Weintraub captioned a reservation of rights on behalf of
12 his clients. Now, for the reasons the GUC Trust and the
13 unitholders set forth in a brief before Your Honor, we would
14 respectfully submit that they didn't give you those reasons.
15 And, in fact, Mr. Weisfelner this morning has stated to you
16 that we are probably correct that -- I'm not sure why probably
17 as opposed to just correct; maybe it's just a difficult
18 concession for Mr. Weisfelner to make -- that having not
19 provided to you a good-faith basis other than the existence of
20 the appeal itself, these two categories of non-ignition switch
21 plaintiffs didn't tell Your Honor why the equitable mootness
22 holding shouldn't be applicable to them.

23 So, Your Honor, everyone has come before you today,
24 and you'll see in our letter, the GUC Trust asset pleading is
25 ripe for Your Honor's decision. It was a limited issue. No

1 party is suggesting that there be any more briefing. No party
2 has suggested that there be oral argument. And it's a very
3 limited pleadings at issue. It's Mr. Weisfelner's omnibus
4 motion to the extent that it has a GUC Trust asset pleading at
5 the end, and the reservation of rights submitted by
6 Mr. Weintraub.

7 Mr. Weintraub will tell you that that's not intended
8 to be a GUC Trust asset pleading, but the date of its
9 submission and the issues that he discusses in it make it very
10 difficult for me to understand why it's not intended to be that
11 GUC Trust asset pleading. In any event, if it's solely
12 intended as a reservation of rights, he hasn't complied with
13 Paragraph 13(d) of the judgment, which required the parties to
14 set forth their good-faith basis why the equitable mootness
15 holding shouldn't pertain to them.

16 Now, why does this matter? Your Honor said in your
17 May 27th decision that it was time to come to closure for the
18 liquidating trust and its beneficiaries, and we couldn't agree
19 more. None of the issues that I've raised here today, Your
20 Honor, impair or impede the resolution of what I think the
21 parties to both sides of me would agree are maybe more pressing
22 issues, but the liquidating trust has a desire to get on with
23 its business, to move on and to stop spending money
24 unnecessarily on things that we don't think concern us.

25 One of the things that's so, I guess, baffling to me

1 is that Mr. Weisfelner came up this morning and he said that he
2 wants to reserve -- in addition to his umpteenth attempt at
3 trying to reargue the equitable mootness holding, he says it's
4 okay with him if you decide the GUC Trust asset pleading so
5 long as you cordon off some sort of attempt for his parties to
6 tell you why the accordion feature should be reserved for them
7 and why they should have a preserved right to brief the
8 accordion feature. Respectfully, Your Honor, that's a
9 distortion of your April 1st decision, that's a distortion of
10 your May 27th opinion, and that's a distortion of the judgment
11 itself, all of which make amply clear that Your Honor decided
12 the issues before Your Honor with ample consideration of the
13 accordion feature.

14 And let me go through why that is. Paragraph 6, Your
15 Honor, of the judgment makes clear that the equitable mootness
16 holding as it applied to the ignition switch plaintiffs applied
17 to the GUC Trust assets past, present and future. That was
18 language about which the parties disagreed heartily during the
19 negotiation of the judgment. Your Honor was asked to pass on
20 that issue, and Your Honor took up that issue and passing on
21 the judgment.

22 And, Your Honor, in your May 27th decision, which was
23 meant to amplify certain of the decisions you made in coming to
24 the judgment, you discussed the --

25 THE COURT: May 27th is the form of judgment

1 decision?

2 MS. RUBIN: No. That -- it's the form of judgment
3 decision, Your Honor, that's correct. And on Page 9 of that
4 decision -- and again I'm reading from the decision -- Your
5 Honor says as follows. Your Honor was trying to describe why
6 there was certain language about the GUC Trust assets in
7 respect to Section 502(j), and you said:

8 "It was necessary in the Court's view to include
9 different provisions in the judgment with respect to
10 new claims as opposed to the reconsideration of old
11 ones." And I quote, "When Old GM creditors receive
12 distributions under the plan and when unitholders,
13 even if as after-market acquirers of GUC Trust units,
14 acquire their units, they had a reasonable
15 expectation that the total universe of claims filed
16 against Old GM would not increase, and while they
17 knew there was an accordion feature" -- these are
18 Your Honor's words -- "they also knew that claims
19 exposure would result with exceptions exceedingly
20 difficult to show only from previously filed claims."
21 And that's Pages 9 to 10 of the May 27th decision on
22 form of judgment. That to me indicates that contrary to
23 Mr. Weisfelner's very impassioned presentation, Your Honor knew
24 full well there was an accordion feature when you made your
25 decision on April 1st, you knew full well that accordion

1 feature was part of what remained in dispute between the
2 parties and negotiating in the form of judgment, and Your Honor
3 took that all into consideration.

4 What Mr. Weisfelner is trying to do now is no less
5 tactical than what he tried to do here in February, what he
6 tried to do last November in not seeking to enjoin the
7 distribution that my client made. Mr. Weisfelner has been
8 presented at various points in this proceeding with decision
9 points about who he wants to pursue his claims from, where he
10 wants -- whose pocket he wants to pick, and his highest
11 priority pocket is Mr. Steinberg's, it's not mine. But that's
12 Mr. Weisfelner's decision.

13 And again he has not filed the motion for reargument
14 of the April 1st decision. He has not even filed the claim,
15 nor has Mr. Weintraub. So even though Your Honor's April 1st
16 decision invites them to file late-filed claims, arguably so
17 Your Honor could resolve whether those claims are allowed
18 pending appeal so that if they win on their appeal to the
19 Second Circuit, there wouldn't be delays in compensating them,
20 they still haven't filed the proof of claim. Not a class
21 claim, not an individual claim, no claim at all.

22 And nonetheless they stand here before you this
23 morning and say that it's okay with them if you decide the GUC
24 Trust asset pleading so long as they have a right to argue that
25 the accordion feature somehow applies to them. They're putting

1 the cart before the horse, Your Honor. They are still playing
2 tactical games with the Trust, and they are pushing for a stay
3 of distributions pending appeal for a category of people that
4 don't even have claims, let alone a decision affecting them,
5 let alone an appeal that involves them.

6 So what I'm here before you, Your Honor, to ask for
7 is that you narrow the issues before you to the extent that you
8 can. Again, no oral argument is required. No further briefing
9 is required. Let's resolve as much as can be resolved as
10 possible for the liquidating trust and its existing
11 beneficiaries.

12 And further, Your Honor, I believe that resolving the
13 GUC Trust asset pleadings will also facilitate ongoing
14 settlement discussions. Your Honor knows that the GUC Trust
15 has reporting obligations, and therefore I'm not at liberty to
16 say anything further about those settlement conversations other
17 than to say to the extent that Your Honor can resolve
18 outstanding issues affecting the GUC Trust, I believe they
19 would and could go a long way to forwarding conversations among
20 the parties.

21 Your Honor, I'll rest now and I'll take any questions
22 if you have them.

23 THE COURT: All right. Thank you.

24 Mr. Golden, do you need to supplement what Ms. Rubin
25 said?

1 *T MR. GOLDEN: I don't, Your Honor. Thank you for
2 letting me participate by phone. I think she thoroughly
3 covered the points I would have covered.

4 THE COURT: Okay. Mr. Weisfelner?

5 MR. WEISFELNER: Just quickly in terms of a reply,
6 and I'm going to get to the GUC Trust in a bit, but I do
7 believe that, with no insult intended to Ms. Rubin or her
8 clients, they are the tail wagging the dog.

9 Your Honor, I'm not a trial lawyer by trade, but as I
10 was listening to Mr. Steinberg's presentation to the Court, it
11 occurred to me that -- or I started imagining how GM, New GM,
12 would otherwise go about protecting their interests absent
13 asking Your Honor, in our view, to re-litigate a lot of the
14 issues that they lost on, and in particular the whole issue of
15 independent claims.

16 So you've got a jury in the jury box, you've got a
17 judge, and there's litigation over punitive damages. And it
18 seems to me that the fastest way to resolve the issue -- not,
19 again, being a trial lawyer -- is for New GM to contend that
20 there needs to be an instruction to the jury, and the Court
21 ultimately resolves the instruction to the jury that sounds
22 something like, you may not find punitive damages against New
23 GM, even if you found compensatory damages against New GM
24 because, by the way, if you didn't find compensatory damages,
25 there's no predicate for punitive damages.

1 But having found compensatory damages, you're now
2 being asked to consider punitive damages. Here's my
3 instruction to you, jury, you may not find punitive damages
4 against New GM that are predicated on things Old GM did.
5 That's for the economic loss plaintiffs.

6 For the personal injury plaintiffs, depending on the
7 outcome of their argument with regard to whether or not
8 punitive damages on post-sale accidents were part of their
9 assumed liabilities -- and I've read the language and I think
10 Weintraub is right, but assuming that he somehow loses on that
11 issue, again, why isn't it resolved by virtue of a jury
12 instruction where instead of going through this whole
13 rigamarole, this whole retrial, this whole effort to delay and
14 prevent Judge Furman or the courts in California or the courts
15 in Arizona from dealing with their actions?

16 We see New GM once again saying, whoa, slow down, I
17 don't want to get anywhere near a trial, anywhere near a jury
18 where these issues could be easily resolved by virtue of a jury
19 instruction or a court instruction. They instead want to slow
20 the whole train down and take one more bite at the apple.

21 Judge, can you please tell us that when you defined
22 independent claim, you really need to go back and figure out
23 whether or not your definition of independent claim somehow
24 violates the contractual clause of retained liabilities.
25 Because if it's a retained liability, it can't be an

1 independent claim. What? We did this already.

2 The thing that amazes me about New GM's position is
3 -- and, Your Honor, I thought said it at the end of my prior
4 remarks. Is it possible for a bankruptcy court to approve a
5 sale in the 363 context where whether or not the buyer engaged
6 in bad faith, the buyer is entitled to what I refer to as a get
7 out of jail free card?

8 Listen, you can independently start polluting the
9 environment all over again. You can independently do whatever
10 it is that the old debtor, the seller, was once upon a time
11 accused of. You can do it on your own dime, your own time.
12 You can do it knowingly and you've got a get out of jail free
13 card. That's not the law.

14 And when Mr. Steinberg got up to address the Court,
15 he never got close to that issue. He only said that, well, you
16 know, the non-ignition switch plaintiffs can't take the
17 position that they've got independent claims. They have no
18 claims because the sale order is still binding on them until
19 they can show a due process violation. Why?

20 So until and unless I show a due process violation,
21 the buyer, New GM, can do whatever it wants to do and it can't
22 be sued by anybody, anywhere, anytime. He's never addressed
23 that.

24 We're here for procedural purposes. It seems to me
25 crystal clear that what Your Honor needs to do for Judge Furman

1 is Your Honor needs to be the gatekeeper as to whether or not
2 the bellwether trials properly assert punitive damages. That's
3 issue number one. And I think I will adopt a page from
4 Mr. Steinberg's suggestion that you send all of us back to the
5 drawing board on what's going to get filed, when and how many
6 pages, understanding as we now do, and we didn't when we wrote
7 our respective letters, where Judge Furman's focus of attention
8 is. And I think we all need to do our best to try and get that
9 stuff out of the way.

10 And I thought we were going down the right track
11 procedurally when we focused on punitive damages, but then we
12 got diverted again when Mr. Steinberg said, we've got to focus
13 on punitive damages, we've got to focus on imputation. Well,
14 Your Honor, did you or did you not say today that you thought
15 you were crystal clear on imputation? What else needs to be
16 determined on imputation?

17 I think, but I don't know -- I think that what Judge
18 Furman may have been struggling with was Your Honor's
19 commentary in your decision that nothing about imputation is to
20 be used outside the context of the four threshold issues, and
21 in particular doesn't apply to the MDL. Well, Your Honor, I
22 don't think we're supposed to be re-litigating imputation as a
23 matter of fact or as a matter of law. I think the only thing
24 Judge Furman needs, unless GM can convince you otherwise, is
25 that to the extent that imputation of bad knowledge to New GM,

1 which is the bad actor in the complaints that are alive, the
2 law of imputation of the knowledge of New GM employees is not a
3 matter that Judge Furman, with all -- that Judge Furman needs
4 your help with, and that's not what he was asking.

5 I think he was asking for clarification of the
6 language that said, you can't use the imputation for part of
7 the MDL. But he can use his own brain. He can allow the
8 parties to rebrief imputation. It's a different imputation.
9 It's the question of knowledge of New GM employees, knowledge
10 that New GM garners from books and records that it adopts, the
11 extent to which all of that gets imputed to New GM for purposes
12 of independent claims against New GM.

13 So I don't know why we're briefing that on a triage
14 basis. That's an issue that ought to be determined by the
15 trial courts when they trial their cases with proper jury
16 instructions.

17 THE COURT: Mr. Weisfelner, where is the statement
18 that has caused the ambiguity about imputation being capable of
19 being used or not being capable of being used in the MDL?

20 MR. WEISFELNER: I'll find it for you in a second,
21 Judge. I think it was part of the judgment itself.

22 MR. STEINBERG: Your Honor, it is part of a June 1
23 judgment.

24 THE COURT: And the judgment is contrasted to either
25 of the two opinions that preceded it.

1 MR. STEINBERG: That's correct because the parties
2 had to deal with the fact that there was a stipulated factual
3 record, and they wanted to make sure that the stipulated
4 factual record was limited -- it was only done for purposes of
5 the four threshold issues, so we wanted to have clarity on that
6 issue. And this particular point which was raised in my letter
7 was because notwithstanding that specific provision in the
8 judgment, not just in the MDL, but more the other proceedings
9 outside the MDL in the state court, they're citing the findings
10 of the judgment in prohibition to that. So this was not done
11 really for Judge Furman. This was done for the other courts to
12 make sure those plaintiffs don't abuse the judgment. And I
13 don't know what Mr. Weisfelner is intuiting what was in Judge
14 Furman's head.

15 MR. WEISFELNER: Your Honor, again, I think we're all
16 in agreement that the language comes from the judgment. I
17 can't lay my hands on it that quickly, but here's the problem.
18 Your Honor determined that --

19 UNIDENTIFIED: Here's the language, 15(d).

20 MR. WEISFELNER: Thank you. For these reasons and
21 others, the findings of fact --

22 THE COURT: What paragraph are you reading from,
23 please?

24 MR. WEISFELNER: I'm reading from Paragraph 15(d).

25 THE COURT: Fifteen delta?

1 MR. WEISFELNER: Fifteen delta. That's right, Your
2 Honor. Page 14 of the 21-page judgment. And what it provides
3 in substantive part is the findings of fact in the decision
4 shall apply only for the purposes of this Court's resolution of
5 the four threshold issues and shall have no force or
6 applicability in any other legal proceeding or matter,
7 including, without limitation, MDL 2543. Notwithstanding the
8 foregoing and all events, however, the decision and judgment
9 shall apply with respect to the Court's interpretation of the
10 enforceability of the sale order and the actions of the
11 affected parties that are authorized and proscribed by the
12 decision and judgment.

13 And again, just so that I'm crystal clear on this,
14 the question of whether or not the 24 Old GM employees that
15 became New GM employees as of the effective date of this sale,
16 whether their collective knowledge can be imputed to New GM, if
17 that's an issue in any other case as it is in the second
18 amended consolidated complaint, as I believe it is in the
19 California and Arizona actions, then it seems to us that those
20 courts can take a look at those allegations and take a look at
21 the proof that's made by those parties, following whatever
22 additional discovery those parties are ultimately pursuing, and
23 those courts can determine, based on that evidence, whether or
24 not imputation of that knowledge, or for that matter any other
25 knowledge, to New GM is appropriate as a matter of fact and as

1 a matter of law.

2 If we are, all of us, focused on something that's
3 efficient, that affords other courts the opportunity to get on
4 with their cases and calendars. Why in the world do we need to
5 come back to the gatekeeper who's already made a determination
6 with regard to imputation with regard to stipulations between
7 the parties and now ask you all over again to make an
8 imputation decision that's bereft of the kinds of facts and
9 evidence and argument that are ultimately going to be made in
10 those cases? I don't think that's what Judge Furman, with all
11 due respect to him, was asking you to do. I think what he was
12 asking was for some clarity about how the decision, to the
13 extent it relied on stipulated facts, was not to apply in the
14 MDL.

15 And I think what Your Honor had in mind -- once upon
16 a time, you asked me whether or not you could utilize your
17 knowledge of the background facts of this case in order to
18 render ultimate decisions, and I said unless you were prepared
19 to have a lobotomy, I didn't think we could avoid it. Your
20 Honor, my point here is that the ultimate determination of
21 whether or not employee knowledge or books and records, facts
22 that are contained in those books and records, can be imputed
23 to New GM is not a determination that I think the Bankruptcy
24 Court could or should be making without the benefit of
25 discovery and trial on the merits.

1 And courts of competent jurisdiction are amply able
2 to ultimately determine whether or not imputation, under the
3 law of whatever jurisdiction will govern -- I presume there may
4 be some differences on imputation. It's not necessarily
5 federal common law, I don't know, but it's not something that I
6 think the Bankruptcy Court rightfully ought to be focused on,
7 and I don't think it's what Judge Furman had in mind in terms
8 of triaging issues.

9 Now, the other thing that Mr. Steinberg then slipped
10 in when he talked about what he wants to triage, he talked
11 about punitives because you can't get away from what Judge
12 Furman said about that. He talked about imputation, and I
13 think, quite frankly, he's banging his head against the wall,
14 but he wants to see what happens. Maybe Your Honor will bite
15 on it.

16 The third thing he talked about is other causes of
17 action proscribed by the sale order and original injunction and
18 causes of action that are still proscribed based on Your
19 Honor's sale order and injunction. Well, that's a whole
20 another reargument again. I went through carefully a list of
21 the issues in his letter, and I think I made it clear that in
22 terms of the way we should be going forward by way of a
23 schedule and what we ought to be triaging, and in an effort to
24 make our next meet and confer reasonable, Judge, we need some
25 direction beyond the triage that Judge Furman says he needs --

1 THE COURT: Well, I can give you a little more
2 direction that may help your meet and confer, and it ties into
3 one of the very few -- well, perhaps very few is an
4 overstatement -- what I consider to be one of the closer
5 questions that you guys were arguing about, which is that when
6 people have not shown a due process violation yet, that being
7 the subset of your larger constituency with non-ignition switch
8 issues, where they have not shown that 24 people or even one
9 person at New GM had enough knowledge to make them knowing
10 plaintiffs -- or knowing claimants, excuse me -- whether they
11 should get benefits that the remainder of your constituency won
12 in the last go-around. And Mr. Steinberg's position, as I
13 understand it, is that even if it is so, that if I were ruling
14 on a clean slate with the ability to be heard back in 2009,
15 that what I ultimately ruled with respect to environmental
16 claimants and narrow view of economic loss claimants, vis-à-vis
17 ignition switches, whether they should or should not be
18 beneficiaries of that ruling, then they haven't established a
19 due process violation. That was the context in which I said
20 what I was saying.

21 Now, hopefully that's not too cryptic, but the
22 non-ignition switch plaintiffs' inability or inaction to have
23 yet established a due process violation to give them the
24 benefits that the remainder of your constituency got is, in my
25 view, a big issue.

1 MR. WEISFELNER: Okay. I mean, again, just as a
2 matter of fact, discovery with regard to the non-ignition
3 switch defects that are at issue are ongoing. And while --

4 THE COURT: I understood that, and it certainly was
5 ongoing back on April 15th --

6 MR. WEISFELNER: Right.

7 THE COURT: -- which is why the opinion didn't cover
8 them.

9 MR. WEISFELNER: Right. But, Your Honor, look, it
10 still seems to me that, you know, one could argue that whether
11 or not you're the beneficiary of a due process violation
12 because you were a known creditor, nevertheless, Your Honor's
13 sale order could not as a matter of constitutional law, Second
14 Circuit law, have provided New GM with a get out of jail free
15 card with regard to its post-sale independent acts and conduct.
16 I just don't think that the --

17 THE COURT: I understand that's the argument you're
18 going to make. You had telegraphed that before. My guess is
19 that Mr. Steinberg is going to have a different view, and
20 that's why I called it an issue rather than something that I've
21 decided.

22 MR. WEISFELNER: Okay. To the extent that that
23 remains an issue, then in terms of triaging things, it seems to
24 me that we need to get that issue teed up quickly because to
25 the extent that people, either New GM or us, depending on who

1 loses, needs to appeal that decision, they ought to get
2 started. But again, in terms of triaging the remaining issue,
3 what frustrates us on the plaintiffs' side is every opportunity
4 that New GM can take, it does take in an effort to try and
5 reinterpret, redefine, cut down on, narrow the scope of the
6 definition of independent claims.

7 And they're not all, as Mr. Steinberg indicated,
8 briefed in the no strike/no stay pleading because we didn't see
9 any of these issues emanating from New GM, frankly, until after
10 Judge Furman denied the motions to withdraw the reference. And
11 I think that emboldened New GM to try and take another bite at
12 the apple.

13 And, Your Honor, I think maybe the right thing to do
14 is, with your guidance, send us back to the drawing board. We
15 will try desperately hard again to come up with an appropriate
16 scheduling order with the right issues. But again, to the
17 extent that New GM insists on having Your Honor act as a
18 gatekeeper on issues that we believe are more properly resolved
19 in the context of trial because we don't think it impacts Your
20 Honor's role as a gatekeeper -- we think the gatekeeper role is
21 tell us if this is an independent claim or not an independent
22 claim. And Mr. Steinberg can tell you there are 60 pages of
23 allegations with regard to Old GM, and our point is you can
24 have 600 pages of allegations with regard to Old GM. Focus on
25 the claim and cause of action. Focus on what it is that you

1 want recovery for. Focus in on what it is you're asking the
2 jury to decide based on instructions from the judge.

3 And you will see that the liability we assert is New
4 GM's liability, that the allegations regarding Old GM are of
5 necessity background information. You don't start a story, if
6 you will, about New GM -- I'm sorry, GM manufacturing cars with
7 known defective components beginning in '03 and '04, going
8 through all sorts of evaluations, tests, and accumulation of
9 information that the ignition switch defect, in fact, presented
10 a known safety defect that was killing people throughout the
11 country, that it chooses not to bring to the attention of the
12 Court during its bankruptcy proceeding, that New GM remains
13 completely well aware of from the date it's born and maintains
14 that cone of silence throughout the period from 2009 through
15 2014.

16 And I'm here today to assess liability -- I'm talking
17 to a prospective jury -- against New GM because Old GM's gone
18 and Old GM isn't here and Old GM can't pay for this, and New GM
19 shouldn't be made to pay for something that was an Old GM bad
20 act or bad conduct. Now, I'm going to argue to the jury the
21 facts. I don't want to start the case by saying as of some
22 date in 2009, New GM was born.

23 THE COURT: I know that you don't want to start your
24 case that way, but you are going to start the case within the
25 constraints of what the law requires.

1 MR. WEISFELNER: Absolutely.

2 THE COURT: And whether it's done by a curative
3 instruction, which anybody who's ever been a litigator has to
4 kind of laugh at, or a motion in limine, and then whether that
5 motion in limine comes from the trial judge or is required by
6 the gatekeeper judge is a matter to be determined under the law
7 rather than your tactical preferences. I used to be a trial
8 lawyer. I know what I like to do. I don't always get what I
9 want.

10 MR. WEISFELNER: And, Your Honor, again, all I'm
11 suggesting is that the practical reality of this Court being
12 asked to be the gatekeeper not once, not twice, not three
13 times, but multiple times in situations where you've got a
14 lawsuit pending before the District Court, you've got two
15 lawsuits pending, one in Arizona, one in California, you've got
16 bellwether cases, you've got a case on presentment that the New
17 GM wants to get you out of, I forgot, Minnesota, Minneapolis,
18 some other place.

19 THE COURT: Missouri.

20 MR. WEISFELNER: Missouri, and God knows how many
21 other complaints they're going to want to bring to your
22 attention. It seems to me that as a matter of judicial
23 economy, if nothing else, how many times can they knock on your
24 door when the issue is just as well resolved in the trial
25 court? And frankly, you know, we believe that Your Honor has

1 done yeoman's work with regard to your gatekeeping function.

2 Your Honor, unless you have any questions, I should
3 get back to Ms. Rubin's commentary with regard to the GUC
4 Trust. Your Honor, it's their call. As I said before, if they
5 want to move forward with their September 22nd trial on whether
6 there's any basis to prevent them from making the last
7 distribution, so be it. Our argument is and has always been,
8 and I can read Your Honor's decisions as well as Ms. Rubin can,
9 our view is whether Your Honor intended it or not as a matter
10 of appeal and the likelihood of prevailing on appeal. Any
11 decision on equitable mootness has to be predicated on the
12 inability to unscramble the egg and afford a party an effective
13 remedy without doing damage to the damaged party.

14 And Your Honor we understood to say in your equitable
15 mootness decision that it would be unreasonable for any number
16 of reasons, including tactical decisions that I've been blamed
17 for, to ask the unitholders to give back what they've already
18 gotten or to be disappointed in their reasonable expectations
19 going forward.

20 And, Your Honor, it's my belief, and this is what the
21 appeal is all about, that that determination as it relates to
22 the accordion feature was inappropriate because if there is an
23 effective remedy that can be crafted for us, that doesn't
24 disappoint their reasonable expectations, i.e. the accordion,
25 then whether Your Honor thought about it or didn't think about

1 it, and I guess in particular if Your Honor thought about it
2 and said, I'm not going to accordion that at all together,
3 forget it, you can never attach the -- attack the accordion
4 feature, that that was an inappropriate decision on Your
5 Honor's part in the law of equitable mootness and we'll leave
6 it to the Second Circuit.

7 I didn't ever ask Your Honor to reconsider or rewrite
8 it or rethink it. It is what it is. And as to the money
9 that's in the bank, we'll deal with it as a matter of a trial
10 on the 22nd, unless Your Honor determines that you've got
11 better things to do. But it's Your Honor's courtroom. Your
12 Honor controls it. We'll be here when Your Honor tells us to
13 be here. Thank you.

14 MR. STEINBERG: Your Honor, my turn, please?

15 THE COURT: All right. We'll go through one more
16 cycle. First Mr. Weintraub, then Mr. Steinberg, then
17 Ms. Rubin.

18 MR. WEINTRAUB: Thank you, Your Honor. I will be
19 brief.

20 First point is that contrary to what was said during
21 argument, I did not admit and my clients have not admitted that
22 anything in the bellwether pleadings were pled beyond the sale
23 order. Our position is that the sale order does not bar the
24 punitive damages claims. And what we argue -- or restate what
25 we said before, there are three paths there -- to get there,

1 and we think that all three paths are pled in the bellwether
2 complaints.

3 With respect to whether the plaintiffs should now
4 amend the bellwether complaints in advance of getting marked
5 pleadings from New GM, I don't think that makes any sense, Your
6 Honor. We believe --

7 THE COURT: You say you don't think that makes any
8 sense?

9 MR. WEINTRAUB: Yes. That we should amend before we
10 get marked pleadings. Without the benefit of this Court's
11 ruling, we'd be amending in the dark, and probably end up
12 perhaps having to amend yet a second or third time. I think
13 that the pleadings, to the extent we need marked pleadings on
14 them, which is something I addressed earlier and said I didn't
15 think we did, because once we know which of the three paths, or
16 all three paths, or two of the three paths is what is the
17 appropriate path for these lawsuit, then I think the pleadings
18 can be dealt with. Or proof at trial could be circumscribed
19 based upon what the plaintiff is permitted to prove.

20 Second point, Your Honor, and I won't belabor this
21 because believe it or not I know when to shut up, and I'm going
22 to try to adhere to that this morning. With respect to the GUC
23 Trust and the reservation of rights that I filed, it was not
24 filed for all non-ISD personal injury claimants. It was filed
25 for a very limited group represented by Mr. Hilliard. That is

1 now a moot point. It was not a GUC Trust asset pleading. It
2 was a reservation of rights.

3 My understanding is Mr. Hilliard is not going forward
4 with representation of non-ISD pre-sale plaintiffs, so that the
5 reservation of rights, whatever it meant, and it still means
6 because I'm not going to un-reserve my rights, it was a
7 statement, rights are reserved, whatever that means, it may be
8 a moot point.

9 THE COURT: Did you say may be a moot point
10 because --

11 MR. WEINTRAUB: Because I --

12 THE COURT: -- I've got a lot of work to do here. If
13 there's something that's moot, I'm not going to reach out to
14 decide something I don't need to decide.

15 MR. WEINTRAUB: I believe it's moot. And
16 Mr. Hilliard is on the phone, and if it's not moot he'll
17 correct me, but I have spoken with him about this, and subject
18 to him telling me I misinterpreted what he told me, I believe
19 it's a moot point.

20 With respect --

21 MR. HILLIARD: Your Honor, good morning. This is Bob
22 Hilliard and I can speak to that issue briefly.

23 THE COURT: Do you want to interrupt Mr. Weintraub
24 for it or do you want to wait until he's done?

25 MR. WEINTRAUB: I would give Mr. Hilliard permission,

1 whenever he wants to interrupt me.

2 THE COURT: All right. Mr. Hilliard, why don't you
3 button it up now, please.

4 MR. HILLIARD: Thank you, Judge. I'll be brief.

5 Mr. Weintraub is correct in that the bellwether
6 complaints will only address and be tried based on the personal
7 injury and deaths and not on the economic loss.

8 MR. WEINTRAUB: I was speaking about something --

9 THE COURT: I thought you were --

10 MR. WEINTRAUB: -- different than that.

11 THE COURT: -- speaking about different -- yes.

12 MR. WEINTRAUB: Yeah.

13 THE COURT: All right. I thought you were talking
14 about --

15 MR. WEINTRAUB: I'm talking about the ability to
16 assert proofs of claim for pre-sale accident victims.

17 THE COURT: Yeah, so --

18 MR. WEINTRAUB: For non-ISD plaintiffs.

19 THE COURT: For non-ignition switch guys, and this is
20 on proofs of claim for non-ignition switch people, which if I'm
21 not mistaken increases the ante, if you will, for Ms. Rubin and
22 Mr. Golden from 22 million cars' worth to 70 million cars'
23 worth. That might get my attention if I were one of them.

24 MR. WEINTRAUB: And just to be clear, Your Honor,
25 what we filed was only for the people listed on the exhibit to

1 our reservation of rights. And Mr. Hilliard, my understanding
2 is he is no longer pursuing for those people on that exhibit
3 the ability to file a late proof of claim for the pre-sale
4 non-ISD plaintiffs on that list.

5 THE COURT: Okay. Now stand by, Mr. Weintraub.

6 Mr. Hilliard, did he properly understand your intent
7 and position or is there a breakdown in communication? I'm not
8 of a mind to estop anybody. I just want to know what's on the
9 table.

10 MR. HILLIARD: He is right, Your Honor.

11 THE COURT: Okay. Now go ahead, Mr. Weintraub.

12 MR. WEINTRAUB: So it's a moot point, so I won't
13 refute several of the misstatements that were made. And I'll
14 stop and shut up, take my own advice.

15 Your Honor, with respect to briefing on the
16 punitives, I thought we were talking about simultaneous
17 briefing -- that's what Your Honor said earlier -- and then I
18 thought it may have morphed into opening brief and reply brief.
19 I would prefer simultaneous briefing.

20 Also, just as a point of clarification, if we are
21 doing the briefing in this court on the bellwether complaints,
22 I would assume that supersedes the 17 business day requirement
23 of responding to Mr. Steinberg's letter that was sent pursuant
24 to the terms of the judgment.

25 THE COURT: Are you talking about on punitives or

1 something different?

2 MR. WEINTRAUB: Punitives.

3 THE COURT: I understand -- I had understood that it
4 would be a briefing schedule that I would set today, which
5 would inevitably trump 17 days. Is that what you're saying?

6 MR. WEINTRAUB: That's what I'm asking for
7 clarification on, Your Honor. Yes.

8 THE COURT: All right. I'll clarify it by the time
9 we're done. I think I have a tentative on that, but I'll let
10 Mr. Steinberg and Ms. Rubin be heard, too, although I don't
11 think she has a dog in the fight on punitives.

12 MR. WEINTRAUB: And I'll stop there, Your Honor.

13 THE COURT: Okay.

14 MR. WEINTRAUB: Thank you.

15 THE COURT: Mr. Weintraub -- forgive me,
16 Mr. Steinberg. At this point I really know who each of you
17 guys are.

18 MR. STEINBERG: Your Honor, I'd like to address
19 Mr. Weintraub's comments first, and then I'll go to
20 Mr. Weisfelner. And I'll try to be brief.

21 On Footnote 4 on Page 3 of Mr. Weintraub's letter to
22 the Court, he writes:

23 "It is our understanding that only two of the
24 bellwether actions, the Norville and the Cochran
25 actions, seek economic loss damages. We had been

1 informed that counsel for the plaintiffs in these two
2 bellwether actions will not pursue claims against New
3 GM for economic loss damages and are willing to amend
4 their complaints to limit the damage sought to
5 compensatory and punitive damages stemming from the
6 post-363 sale incidents at issue."

7 So in his own letter to Your Honor he said he was
8 going to amend the complaints because they had gone beyond what
9 they were supposed to do. Our suggestion was --

10 THE COURT: I -- pause, please, because I think we've
11 got a double entendre here which is causing the confusion.
12 You're saying that you understand Mr. Weintraub to be intending
13 to drop economic loss claims and to go strictly with the PI
14 type claim array. And I think what Mr. Weintraub was saying
15 troubled him was asking him to amend, not vis-à-vis, that
16 aspect, but rather reliance on pre-sale old GM activity. I'm
17 not sure if you and he disagree or not.

18 MR. WEISFELNER: Well --

19 THE COURT: I think I'd actually like you to pause
20 for a second, whisper to Mr. Weintraub whether the distinction
21 I'm making is the distinction, because if it's what I think
22 you're saying, you could agree in eight seconds and his needs
23 and concerns could be addressed and so could yours.

24 MR. STEINBERG: Right. Just to -- let me just say
25 what my position is and then ask Mr. Weintraub if they will

1 confirm it. My position was you amend whatever you think
2 you're supposed to amend. I will then submit a marked pleading
3 if I think you hadn't gone further. But I'm not asking you to
4 do anything more than what you presently indicated you were
5 prepared to do in your letter to the Court.

6 MR. WEINTRAUB: Your Honor, I think the way you
7 described it was exactly what I intended. If we need to have
8 it deemed dropped, that's fine, economic damages. If we need
9 to physically amend the complaint, I think that's a waste of
10 time, Your Honor, and I'd prefer not to do that.

11 THE COURT: Either physically amend or give me a
12 statement now, if you're authorized to do it, that says your
13 client's complaint would be deemed amended to drop economic
14 loss, but to have reserved your existing allegations vis-à-vis
15 punitives.

16 MR. WEINTRAUB: That's correct, Your Honor. I adopt
17 what you just said.

18 THE COURT: Is that enough to skin the cat,
19 Mr. Steinberg?

20 MR. STEINBERG: Almost. All I ask, Your Honor, is
21 not for him to go through formal amendments but to tell me the
22 paragraph numbers of the complaints that he is formally
23 withdrawing so that I know they're not something I have to deal
24 with.

25 THE COURT: Can you guys prepare a stip or consent

1 order to do that so we don't have to do it on the fly with all
2 these people in the courtroom?

3 MR. WEINTRAUB: We're talking about six complaints,
4 five of which are at least 120 pages each. I think it would be
5 a waste of time, Your Honor. What I've said stands. None of
6 those plaintiffs are pursuing economic damages and the claim
7 for relief should be deemed withdrawn. I don't want to put
8 everyone through --

9 THE COURT: All right. Mr. Steinberg, Mr. Weintraub
10 is as honorable as you are. Both of you guys have long track
11 records in this court. Isn't that -- can I rely on that?

12 MR. STEINBERG: No. No, Your Honor, because I don't
13 know what he's talking about. I -- it's not --

14 THE COURT: I can tell the difference between an
15 economic loss claim and a PI claim pretty easily.

16 MR. STEINBERG: Well, in the -- in those cases is it
17 -- does -- is it the cause of action on the Consumer Protection
18 Statute? Is that what you're dropping? I just need -- it's
19 not that hard for him to say Paragraphs 12 through 32. I'm not
20 even asking to the -- anything with the underlying facts. All
21 I want to know is when he gets to the cause of action one, two,
22 three, and four, which ones are the ones that are -- remain.
23 That's all I'm asking for him to say. That's easy to do.

24 MR. WEINTRAUB: We can look at the causes of action
25 as opposed to the underlying factual allegations and point out

1 which ones are deemed withdrawn.

2 MR. STEINBERG: That would be acceptable to us.

3 MR. WEINTRAUB: I would just add, Your Honor, that we
4 don't believe that we went beyond whatever restrictions there
5 are --

6 THE COURT: I'm not looking to assign blame. What I
7 am looking for is to make this issue go away. One way or
8 another I want you guys to make this issue go away. You've got
9 too many substantive things to be arguing about, when you're on
10 the one yard line, to be arguing about this. It's not a good
11 use of anybody's time.

12 MR. WEINTRAUB: I agree, Your Honor. We will do what
13 I just said we would do.

14 MR. STEINBERG: All right. The second thing is, Your
15 Honor, that in our letter to Your Honor we had indicated that
16 we believed that the briefing schedule you set on the punitive
17 damage issue, and broader than that, all the other issues, to
18 the extent that we have an outstanding demand letter which
19 includes the six bellwether complaints, that the 17 business
20 days would be overridden by the briefing schedule that Your
21 Honor set.

22 THE COURT: Right.

23 MR. STEINBERG: So we had made that suggestion in our
24 letter to you.

25 THE COURT: Okay.

1 MR. STEINBERG: So I think that's all I'm going to
2 say about what Mr. Weintraub had remarked.

3 I will say that with regard to Mr. Weisfelner's
4 remarks that vis-à-vis the GUC Trust asset pleading, we should
5 know before the end of the day are they withdrawing their GUC
6 Trust asset pleading or not. Are they asking Your Honor to
7 decide it based on the papers, or has he now made the
8 concession that Your Honor's ruling applies to the non-ignition
9 switch plaintiffs as well as the ignition switch plaintiffs
10 with regard to the equitable mootness cause of action? That's
11 pretty simple to decide, whether I've withdrawn it or I
12 haven't. He's come close to the finish line, but he hasn't --

13 THE COURT: Well, are we talking about a reservation
14 of rights or something different?

15 MR. STEINBERG: People could reserve whatever rights
16 they want, but at the end of the day there's something --

17 THE COURT: Well, Ms. Rubin made the point that there
18 was no GUC Trust asset pleading, or at least I understood that
19 to be her point, aside from the reservation of rights.

20 MS. RUBIN: No. Can I clarify, Your Honor, please?

21 THE COURT: Yeah, but come to a mike so it gets
22 picked up in the recording transcript.

23 MS. RUBIN: I think I can clarify this pretty easily,
24 if I could. Mr. Steinberg?

25 There are two pleadings and I'm sure that

1 Mr. Steinberg and Mr. Davidson would agree with this.
2 Mr. Weisfelner, on behalf of his clients, he represents non-
3 ignition switch plaintiffs with economic loss claims, they
4 filed an omnibus brief at the end of which had a section called
5 GUC Trust asset pleading. Separately, Mr. Weintraub filed a
6 reservation of rights on behalf of, as he has clarified,
7 certain non-ignition switch pre-sale accident plaintiffs. It's
8 Mr. Weintraub who is now saying he is willing to either
9 withdraw or concede that it's moot.

10 Separately, I believe that what Mr. Steinberg is
11 saying is that Mr. Weisfelner has said we are probably correct
12 that the reasoning in Your Honor's April 1st decision, and the
13 judgment itself as entered by Your Honor on June 1st, that we
14 are probably correct that that reasoning should apply equally
15 to non-ignition switch plaintiffs of both varieties, but
16 probably he is saying that in connection with the economic loss
17 plaintiffs.

18 So there are two pleadings that we consider GUC Trust
19 asset pleadings. I understand Mr. Weintraub to say one of them
20 is moot. What Mr. Steinberg is asking is will Mr. Weisfelner
21 tell us once and for all whether he's willing to say the
22 rationale should apply equally and Your Honor can rule on that
23 and we can move on.

24 THE COURT: All right. Now I'm with you.

25 All right. Back to you, Mr. Stein --

1 MR. STEINBERG: I think he -- I think Ms. Rubin said
2 Mr. Weintraub when she meant Mr. Weisfelner there,
3 Mr. Weintraub's reservation of rights. I agree with the
4 argument that -- I think we made the argument was non-
5 responsive to having to file an affirmative pleading.

6 But all I'm trying to say, Your Honor, on this
7 particular point is that there's something called the GUC Trust
8 asset pleading. All sides in their letters to Your Honor have
9 said you could rule on the papers and there's no need for oral
10 argument. But based on what transpired today, it may be that
11 there's nothing to rule on because they've withdrawn the
12 request. Somewhere before the end of the day they should tell
13 you whether they've withdrawn the request, what it is that
14 they've withdrawn, and so that Your Honor will know what's left
15 to rule upon. That's all I'm trying to say on that point.

16 THE COURT: Okay.

17 MR. STEINBERG: The other comments that I wanted to
18 address was Mr. Weisfelner trying to argue what a trial lawyer
19 might do in front of a jury and what Judge Furman may have
20 intended to say notwithstanding what the transcript says what
21 he intends to say.

22 So, Your Honor, we gave you the transcript. I don't
23 want to burden the record necessarily by reading it. On Page 8
24 out of 57, the judge, Judge Furman, gives three things that he
25 would like to have resolved, and those three things are

1 punitive damages, imputation, and the effect of Your Honor's
2 rulings on the pleadings that were filed in connection with the
3 bellwether.

4 So those are the things that I had said that we
5 should try to address in the next 30 days, work out a schedule,
6 get it to Your Honor to be able to do it. I don't have to do
7 more than that about whether -- what Judge Furman thought he --
8 what Mr. Weisfelner hoped he had said about imputation or not.
9 We'll brief it. Your Honor will then decide what you want to
10 do based on that, and that will give Judge Furman everything he
11 needs on the bellwether.

12 Everything else after which, which deals with the
13 economic loss plaintiffs and the appropriate schedule and the
14 level of the briefing, I obviously have a response. I will be
15 somewhat if I try to do it now repetitive of what I had said
16 earlier. I don't want to burden Your Honor since
17 Mr. Weisfelner has picked up on my suggestion that we should
18 try to do it on a consensual basis and give you some -- give
19 Your Honor something that we have.

20 So I'm prepared to rest on all of it, but not because
21 I'm reticent to engage in a toe-to-toe argument and to -- and
22 refute each of the points, only because I think when both sides
23 agree we can try to work it out to make it more presentable to
24 Your Honor, that's where we should put the period and move on.

25 THE COURT: Okay. Ms. Rubin, do you have other stuff

1 beyond what you already said?

2 MS. RUBIN: Just very briefly, Your Honor.

3 THE COURT: Okay.

4 MS. RUBIN: I'll try to make this the briefest
5 wagging of the tail ever. Your Honor, I just want to clarify
6 we are going to go forward on September 22nd. And that's a
7 hearing, as Your Honor knows, on whether Mr. Weisfelner's
8 clients are entitled to a stay of future distributions from the
9 GUC Trust.

10 THE COURT: I understand that to be separate and
11 apart from the remainder of the issues.

12 MS. RUBIN: I -- and that was going to be my point,
13 Your Honor. It has nothing to do with the GUC Trust asset
14 pleading. It has nothing to do with the accordion feature.
15 It's a day on which Mr. Weisfelner's clients are going to have
16 to show their entitlement to a stay by meeting criteria,
17 including the likelihood of success on the merits of their
18 appeal.

19 THE COURT: I assume you guys are both going to be
20 making your usual objection to their arguments. Maybe I'm
21 showing my age, the usual standards for a preliminary
22 injunction in the Second Circuit.

23 MS. RUBIN: Yes, Your Honor. And in addition to
24 that, we're going to have to talk about whether or not
25 Mr. Weisfelner's clients should post a bond, as our argument is

1 that they should.

2 Now, the only reason I raise this, Your Honor, is to
3 say to the extent that there's any connection at all between
4 some of the issues I've been discussing today and that hearing,
5 it was to say Mr. Weisfelner is seeking a stay of distributions
6 on behalf of a number of groups of people, the ignition switch
7 plaintiffs but also the non-ignition switch plaintiffs that he
8 represents with economic loss claims. And my only point was to
9 say those folks aren't really before Your Honor. They haven't
10 filed a claim. There is not decision affecting them until Your
11 Honor rules on the GUC Trust asset pleading.

12 I was only meaning to suggest the bulk of the people
13 that are driving this motion for a stay of distributions, the
14 millions and millions of them that Your Honor was referring to,
15 those are non-ignition switch plaintiffs. And so the time has
16 come to resolve whether or not the equitable mootness holding
17 should even apply to them before they ask Your Honor -- put the
18 cart before the horse and ask Your Honor to stay my client's
19 distributions and ones that affect the GUC Trust beneficiaries.

20 THE COURT: Well, you're giving a preview of your
21 September 22nd arguments?

22 MS. RUBIN: I'm not sure that I am, Your Honor. My
23 September 22nd arguments I think are much more geared toward
24 the merits and why I think Mr. Weisfelner is going to lose on
25 his appeal.

1 THE COURT: Again, but then what are you arguing now?

2 MS. RUBIN: I'm only meaning to say that the two are
3 not connected other than those on which he has moved -- those
4 on whose behalf on which he has moved. Those are people who
5 are affected by this GUC Trust asset pleading. It's time to
6 resolve whether they are even affected by the judgment that
7 they are claiming they want a stay in support of.

8 THE COURT: All right.

9 MS. RUBIN: Thank you, Your Honor.

10 THE COURT: Okay. Sir, I'm sorry, I don't know you.

11 MR. PELLER: Gary Peller, Your Honor.

12 THE COURT: Oh, Mr. Peller. Yes, I do know you.

13 MR. PELLER: Gary Peller for the Bledsoe, Sesay and
14 Elliott plaintiffs. Your Honor, my plaintiffs include a post-
15 sale personal injury plaintiff as far as ignition switch and
16 non-ignition switch economic loss plaintiffs. They are -- none
17 of them are plaintiffs in the bellwether trials and so there's
18 no triage necessary for briefing on any of their issues. But
19 they would like an opportunity, since they're not represented
20 by designated counsel, to submit papers and to respond to any
21 marked-up pleadings that GM might submit with respect to their
22 complaints. They're not named in the second amended MDL
23 complaint. Their complaints are separate.

24 THE COURT: You can submit any papers you want.

25 Vis-à-vis the timing of the papers, they're going to have to be

1 timed vis-à-vis the issue of -- that is then before me. If you
2 don't have a dog in the fight on punitives, then you can be
3 heard in the timetable dealing with the other stuff. If you
4 have a dog in the fight on punitives, and I sense that you
5 might, then you'll meet the deadlines with the -- imposed upon
6 whoever has the most comparable interest, which I assume is
7 going to be Mr. Weisfelner and Mr. Weintraub.

8 MR. PELLER: Yes. And we're happy to join in --

9 THE COURT: Okay.

10 MR. PELLER: -- whatever deadlines are agreed to.

11 THE COURT: Okay.

12 MR. PELLER: Thank you, Your Honor.

13 THE COURT: All right. All right. Has everybody had
14 a chance to speak their peace? All right.

15 MR. CARNIE: Your Honor, this is Kevin Carnie, I
16 represent the Bavlsik plaintiffs.

17 THE COURT: Okay. That's the name I had trouble
18 pronouncing. Is it Bavlsik?

19 MR. CARNIE: Yes, Your Honor.

20 THE COURT: Yeah, go ahead.

21 MR. CARNIE: I just had one procedural issue that I
22 think that you have addressed. I just wanted to make sure you
23 had the notice of presentment that's been filed. It was filed
24 last Friday. I assume that in addition to the outstanding
25 demand letters that New GM has sent out, that your scheduling

1 order for the briefing on the punitives will also take
2 precedent over that notice of presentment.

3 THE COURT: Okay. Now, under the notice of
4 presentment, you would have been required to respond on what
5 date?

6 MR. CARNIE: Well, Your Honor, that would require us
7 to respond this Friday. And as a preliminary matter, I would
8 let you know that the initial letter was served on us on
9 August 21st. We did not -- we were not given 17 business days
10 to respond. That would have brought it to September 15th.
11 Instead on Friday this notice of presentment was filed.

12 THE COURT: Well, there was a letter that was
13 attached to one of the documents that I saw that I gather you
14 wrote where you kind of telegraph to me the potential for
15 wanting to object to Mr. Steinberg's notice of presentment.

16 MR. CARNIE: Yes. We will, of course, be objecting
17 to the notice of presentment.

18 THE COURT: All right. I want you first and then
19 Mr. Steinberg to tell me your views as to whether you would
20 want -- it would be appropriate for your response on the
21 punitives to either supplement or be submitted at the same time
22 as Mr. Weintraub, Mr. Weisfelner, on their punitives and
23 whether that's agreeable to you, Mr. Steinberg.

24 MR. STEINBERG: Do you want him to go first?

25 THE COURT: Well, first, I'm sorry, I didn't get your

1 name other than the fact that I know you represent Bavlsik.

2 MR. CARNIE: Oh, I'm sorry, Your Honor. My name is
3 Kevin Carnie.

4 THE COURT: Carney, C-A-R-N-E-Y?

5 MR. CARNIE: N-I-E.

6 THE COURT: N-I-E. Okay, Mr. Carnie. Is what you're
7 looking for the opportunity to put in your punitives response
8 at the same time as the other two guys?

9 MR. CARNIE: Yes. I was just making sure, Your
10 Honor, that everyone was in agreement that we would not be
11 responding by this Friday on the punitive damages issue.

12 THE COURT: Uh-huh, okay. Mr. Steinberg?

13 MR. STEINBERG: Your Honor, I would say yes with a
14 caveat, which is that we have always suggested that Mr. Carnie,
15 if he wants to respond, would respond as the same time as
16 everyone else and Your Honor will tackle this at the same time.
17 There is a hearing in the Missouri court next -- this coming
18 Friday. Mr. Carnie will have to give his position as to
19 whether he will oppose an adjournment of a trial to allow Your
20 Honor to rule on that or not.

21 If he's going to oppose the adjournment to allow Your
22 Honor to rule, that is fine. He can file his substantive
23 response to the punitives with everybody else, but we will be
24 filing pleadings before Your Honor to stay the trial on the
25 merits to allow Your Honor to reach the rule -- the merits.

1 So my answer is the merits briefing should happen at
2 the same time, but I'm here telegraphing that if there's not
3 going to be an understanding to allow Your Honor's ruling to
4 apply to the Bavlsik case, we may be able -- we may be coming
5 to Your Honor to address the issue.

6 THE COURT: Mr. Carnie, giving you the extra time and
7 the ability to run along with the other guys makes a lot of
8 sense, but Mr. Steinberg makes a pretty good point to me. Are
9 you going to oppose him on the adjournment?

10 MR. CARNIE: Yes, Your Honor. We have what we
11 believe is a significant waiver issue in our case. This issue
12 of punitive damages, this issue of the sale agreement, the sale
13 order was not raised as an affirmative defense in our case. It
14 was not mentioned until August 21st, and we believe that's a
15 significant waiver issue, and on that basis we are opposing the
16 motion to continue the trial.

17 THE COURT: Mr. Carnie, until and unless I give you
18 the relief from the punitives, you're in contempt of my earlier
19 orders. Are you going to be -- you know, everybody else who's
20 been arguing before me has been up front on this and nobody's
21 trying to get cute. If you insist on going forward without me
22 deciding the threshold issue of punitives, you're going to be,
23 A, in potential risk of getting TRO'd by me on the commencement
24 of that trial, and B, at potential risk of contempt.

25 Now, everybody else has gone by the rules. And

1 forgive me, I'm getting a little angrier than I was earlier on,
2 although hopefully I'm not screaming, but your trying to have
3 it both ways really bugs me. And do you really want to go that
4 route?

5 MR. CARNIE: Your Honor, if I may respond?

6 THE COURT: Of course.

7 MR. CARNIE: Okay. Number one, I do not believe that
8 we are violating your earlier ruling. We were not given 17
9 days to respond and file a no dismissal pleading. The notice
10 of presentment was filed way too soon and the procedures used
11 were not the procedures that Your Honor outlined in the
12 judgment.

13 THE COURT: All right. Here is my ruling on that.
14 You have the later of the time of the 17 days provided under
15 the order and the time that's been agreed upon by other
16 counsel. And if you're going to go this way, we better set the
17 hearing on the TRO right now.

18 And then you can have the hearing on contempt,
19 Mr. Steinberg, either on the same day or thereafter.

20 And, Mr. Carnie, I would sincerely invite you to
21 consider whether you want to go along this route. When people
22 work cooperatively I'm willing to listen to them for hours, as
23 I've been willing to do now today for I guess what's close to
24 four hours, in fact without a bathroom break for any of the
25 poor people in the courtroom. But when you decide to play this

1 kind of hard ball, it's not the way we litigate in this court.
2 Think about that between now and the time of the TRO and/or
3 contempt hearings.

4 MR. CARNIE: Your Honor, I would apologize. It is
5 not my intention at all to play hard ball. This is something
6 that we've been brought in at the last minute in our trial.
7 It's coming up in just a few days here. We have been working
8 diligently to try to understand what is going on in the
9 Bankruptcy Court and what your rulings mean, and we are not
10 trying to disrupt anything. We are not trying to play hard
11 ball. We certainly -- we'd never do anything that violates
12 your order and we do not believe that we have done so. If we
13 have, we will correct that and will apologize.

14 We were under the impression that we had 17 business
15 days to respond to the letter from General Motors, and I think
16 that is where the problem lies.

17 THE COURT: All right. Mr. Carnie, I would invite
18 you, not now but maybe after we're adjourned today, to call one
19 of the very skilled bankruptcy litigators who are representing
20 people who have interests similar to yours. And I'm not
21 telling you what to do, but I'm telling you that I will hear an
22 application on a TRO if this thing isn't satisfactorily
23 resolved. I'm not going to prejudice all of the other parties
24 in this case who have very serious needs and concerns to meet
25 your particular agenda time-wise.

1 MR. CARNIE: Yes, Your Honor, we understand. The one
2 issue I wish clarification on is whether as the gatekeeper your
3 function is to decide the waiver of this or not or whether that
4 is something that belongs in the federal district court here.

5 THE COURT: The waiver argument can be made, but only
6 if you're otherwise allowed to proceed.

7 MR. CARNIE: I'm sorry, Your Honor, I --

8 THE COURT: And I'm not going to decide an issue of
9 that character in a status conference today. All right.

10 MR. STEINBERG: Your Honor?

11 THE COURT: Yes, Mr. Steinberg.

12 MR. STEINBERG: Just on that point. When Your Honor
13 said "if you're allowed to proceed," I assume you meant proceed
14 by Your Honor, not by another Court?

15 THE COURT: You bet your bippy.

16 MR. STEINBERG: All right. Thank you.

17 THE COURT: All right. We're going to take a ten
18 minute recess. You all can go to the men's and ladies' rooms.
19 And then I'll come back to you with some thoughts.

20 (Recess taken at 12:36 p.m.)

21 (Proceedings resume at 12:55 p.m.)

22 THE COURT: All right. Ladies and gentleman, here's
23 what we're going to do. We are going to be triaging the
24 matters as we all discussed, with particular focus on what
25 needs to be done on the bellwether trials.

1 And on the punitives issue, which I regard as most
2 important and most urgent, we're going to have simultaneous
3 opening briefs and simultaneous replies, but we're not going to
4 do it seriatim. Openings for both sides are going to be due no
5 later than Sunday, September 13 at noon.

6 I note for those of you who don't have calendars that
7 a holiday begins that night, which is why I'm setting it for
8 noon that day. The courtesy copies that are normally delivered
9 to chambers may be delivered the next day by non-religious
10 messengers. Replies by each side will be due on noon, Tuesday,
11 September 22nd, for the same reason. And once again delivery
12 to chambers can be done the next day.

13 Vis-à-vis anything anybody still wants to say about
14 imputation, we're going to do a slight variant of that. I want
15 simultaneous openings and simultaneous replies, the replies to
16 be coming in on September 30. I want you to meet and confer on
17 a stip or consent order for a mutually agreed upon date for the
18 openings.

19 On marked pleadings, on the bellwether cases that are
20 going to need to be tried first, I think if I heard you right,
21 Mr. Steinberg, I said you could have -- I think you said you
22 could have your marked pleadings completed by September 21st.
23 Did I hear you right?

24 MR. STEINBERG: That's correct.

25 THE COURT: Okay. With the marked pleading, you can

1 give me, if you choose to, a three-page, single-spaced letter
2 filed on ECF explaining your reasons for your positions on your
3 marked pleadings. The plaintiffs' side can give me a three-
4 page, single-spaced commentary one week thereafter.

5 I want, however, only one responsive commentary,
6 unless there's some showing of cause why one is insufficient.
7 I don't want to get 18 of them. I don't want to get two of
8 them, unless there's something that reflects a material
9 difference in position.

10 The second amended consolidated complaint, though, I
11 don't understand to be a bellwether issue and to both justify
12 and require a slightly longer time. I want you to meet and
13 confer on the mechanism for the marked pleading on the second
14 amended consolidated complaint, but I don't want it to trail
15 the marked pleadings by much later. I'm thinking roughly a
16 week. And on that the commentary by New GM can be five pages,
17 single spaced. And the response, which I assume will come from
18 Mr. Weisfelner, can likewise be five pages, single spaced. In
19 each case, single spaced.

20 On GUC Trust, upon review of my earlier opinion, I
21 think Ms. Rubin did accurately say what I -- what she said I
22 said on Page 9 of the formal judgment opinion, that it is time
23 to come to fully -- to come to closure. It does appear that
24 the matter is fully submitted, and she also convinced me that
25 there was no need to -- or that it would be inappropriate to

1 delay on it. However, I still don't know if this is an issue
2 or not. So I'd like to know by the end of the day what, if
3 anything, is still going to have to be done on GUC Trust.
4 Maybe I can take this one off my plate.

5 Now, and not by the way of -- oh, lastly, Mr. Carnie,
6 your time frame will be as I described it before. You can take
7 the later of 17 days or the time that your allies are going to
8 be submitting their punitive damages things in. But I am not
9 ordering you, but I am strongly encouraging you, to talk to
10 those with like interests on punitives. And let first
11 Mr. Steinberg and then my chambers know -- well, let all the
12 other parties because they're impacted, too, by your strategy,
13 and then my chambers as to whether I need to reserve time for a
14 TRO hearing on that.

15 All right. Not by way of reargument, is there
16 anything I failed to address? Mr. Steinberg?

17 MR. STEINBERG: Yes, Your Honor. On the briefing for
18 the size of the number of pages of briefing, you haven't
19 addressed that with regard to the punitive or the imputation.
20 And I know that our letter had suggested a 20-page limit on the
21 punitive, but -- and then I think 10 pages on the reply. But
22 Your Honor may want to set different limits, but I'd just note
23 that that's a hole in the schedule which either Your Honor will
24 want to fill or not.

25 THE COURT: Yeah. No, that is a hole. I didn't

1 address that.

2 Mr. Weintraub, you may be the point guy on this;
3 otherwise, Mr. Weisfelner, both of you. Does 20 and 10 work
4 for you guys?

5 MR. WEINTRAUB: I'd prefer 25 to open, Your Honor.
6 I'd be fine with 10 for the reply.

7 THE COURT: All right. You can have 25. Anything
8 else?

9 MR. WEISFELNER: Your Honor --

10 MR. STEINBERG: Same thing for imputation, Your
11 Honor?

12 THE COURT: Actually, imputation seems simpler than
13 punitives. I'd like to stick with 20 and 10 on that.

14 MR. STEINBERG: That's fine.

15 THE COURT: Mr. Weisfelner?

16 MR. WEISFELNER: Your Honor, while I don't represent
17 them, I didn't want there to be a hole in the schedule of the
18 states. I presume that there could be a meet and confer with
19 regard to the states. They're not on the same time frame as
20 the bellwether trials, but perhaps the parties can meet and
21 confer as to how long New GM should take on a commentary and
22 how many pages of commentary and response the Court needs.

23 THE COURT: Yes, but I want it all done by
24 September 30.

25 MR. WEISFELNER: Yes, sir.

1 THE COURT: Mr. Weintraub?

2 MR. WEINTRAUB: Just two housekeeping things, Your
3 Honor. You didn't indicate -- or I might have missed it -- a
4 time for the marked pleading letters on the 21st and the 28th
5 of September.

6 THE COURT: Marked pleadings on the bellwethers or
7 something --

8 MR. WEINTRAUB: Yes, on the bellwether. There are
9 three-page letters that you're looking for on the 22nd.

10 THE COURT: I'm sorry. I thought I said one week
11 thereafter.

12 MR. WEINTRAUB: No, no --

13 MR. STEINBERG: No, he's asking whether it's --

14 MR. WEINTRAUB: -- no, what time --

15 MR. STEINBERG: -- 5:00 p.m. or a different time or
16 before midnight. That's what he's asking.

17 THE COURT: If it doesn't run up on the night before
18 a holiday, you can have until the close of business. For that
19 matter, you can have midnight if that's your idea of how you
20 like to spend your evenings.

21 MR. WEINTRAUB: It's not, Your Honor. Just one other
22 thing on the bellwethers and the three-page letter that the
23 plaintiffs would be doing. I'm the attorney representing the
24 plaintiffs in all six of those cases. And you mentioned
25 something about just one letter and sharing letters. I'm not

1 sure who I might be sharing letters with on the bellwethers if
2 it's just me.

3 THE COURT: Well, if you're the only guy then I think
4 the issue drops out.

5 MR. WEINTRAUB: I think so.

6 THE COURT: Am I correct in my assumption that,
7 especially if you're the guy, your position is going to be
8 pretty uniform across all of your clients?

9 MR. WEINTRAUB: I think so, Your Honor. Yes.

10 THE COURT: Okay.

11 MR. STEINBERG: Your Honor, while I don't disagree
12 with what Mr. Weintraub said, there are other state court
13 plaintiffs that are not in the MDL and therefore are not
14 bellwethers which have these types of issues. I do think that
15 that will be a stare decisis collateral estoppel type issue
16 unless we pull them into the process.

17 THE COURT: Well, I've got mixed feelings about that,
18 Mr. Steinberg, because on the one hand I don't want to go
19 through this over and over again. I don't want me or my
20 successor to have to go through this over and over again. But
21 on the other hand, the notion of getting all these people from
22 all over the country popping in and making the same arguments,
23 albeit perhaps not as well as Mr. Weintraub's going to do it,
24 bothers me.

25 So what's your thought? To do it like we did the GUC

1 Trust thing, which is to have this go forward as a prototype
2 with other people having the ability to show why it should be
3 something beyond stare decisis, or I guess it's the other way
4 around. It's going to be stare decisis, but giving the chance
5 to be heard before it's res judicata?

6 MR. WEINTRAUB: Your Honor, I think -- if I could
7 just be heard. What I'm talking about --

8 THE COURT: If you're going to be heard for more than
9 one or two, take Mr. Steinberg's place at the main mike here.

10 MR. WEINTRAUB: What I was referring to specifically
11 were the letters in response to the marked pleadings. I'm the
12 only attorney with respect to those marked pleadings. There
13 may be other people throughout the country that have a similar
14 issue, but those people are not involved with those specific
15 complaints. And so we'd be responding to what is marked in
16 specific pleadings.

17 THE COURT: I take your point. Now, the concepts are
18 going to be the same, Mr. Weintraub.

19 MR. WEINTRAUB: That's in --

20 THE COURT: But the devil will be in the details, I
21 gather.

22 MR. WEINTRAUB: But I think the concepts will be
23 addressed in briefing. And I thought the Court said that
24 anyone who wants to be heard on the briefing can file their own
25 brief.

1 THE COURT: And I told that to Mr. Peller, and it
2 would apply to the other guys, too. Just see if you can talk
3 to them to see if they can minimize the duplication.

4 MR. WEINTRAUB: I will, Your Honor.

5 THE COURT: But I cannot and will not deny anybody
6 the right to file a brief.

7 MR. WEINTRAUB: No, I understand, Your Honor. I just
8 don't want to be constrained in a three-page letter if I'm
9 sharing it with 87 people.

10 THE COURT: Oh, you're concerned about security of
11 circulating your draft or something?

12 MR. WEINTRAUB: No, constrained in terms of space.
13 If I'm sharing three pages --

14 THE COURT: I don't expect you to make 87 guys -- I
15 assume you're mainly going to be talking concepts with some
16 discussion of how it applies to your six guys.

17 MR. WEINTRAUB: That's right, Your Honor, but I'd be
18 -- I presume I'd be responding specifically to what was marked
19 in the six specific pleadings.

20 THE COURT: You don't have a duty to anybody other
21 than your own constituency.

22 MR. WEINTRAUB: That's right, Your Honor.

23 THE COURT: I understand that. Okay.

24 Mr. Steinberg?

25 MR. STEINBERG: Your Honor, I think that perhaps the

1 most efficient way is to deal with it as we dealt with it in
2 the GUC Trust asset pleading. I would ask that we try to
3 capture that in a proposed order which would be the scheduling
4 order because I -- these people have gotten demand letters. So
5 I'd like to be able to write them a note saying that you don't
6 have to respond in 17 business days, these issues are teed up
7 in the context of the bellwether cases and will be presented
8 there.

9 This is the briefing schedule and if you believe that
10 you're entitled to or would like to, you know, file a brief,
11 you should indicate so to the Court or something to that so
12 then Your Honor could then decide, but --

13 THE COURT: What you said sounds sensible, and I'm
14 not sure if the people in the room would disagree with you.
15 What about due process for the people who aren't in the room in
16 terms of me endorsing your idea?

17 MR. STEINBERG: I think, Your Honor, I will settle
18 the order on those people. The goal is to draft an order today
19 which would be acceptable to the people in the room. And I
20 guess, Your Honor, we can then ask Your Honor to sign it, and
21 if anybody has an issue with regard to that, we can give them a
22 short window to object to it as it pertains to them. And then
23 Your Honor could see how many of them emerge from that process,
24 but they will have then had the due process to have a further
25 argument because they were not in the room right now.

1 THE COURT: Anybody in this room object to that idea?
2 Okay. That seems to make sense. Did I not give you enough
3 time to respond?

4 MR. WEINTRAUB: I'm sorry, Your Honor. I didn't hear
5 the question. I was asking --

6 THE COURT: Mr. Steinberg was talking about working
7 out something consensual with the people in this room and then
8 settling it on the much larger universe. And then giving them
9 also a couple of days to file something in case they don't like
10 what the procedures order says.

11 MR. WEINTRAUB: I think that's fine, Your Honor. I
12 thought we did work out that anyone who wanted to file their
13 own brief could. And with respect to the marked pleadings and
14 the bellwethers, I don't have to share three pages with anybody
15 else.

16 THE COURT: I think I did say that, but I didn't see
17 those as inconsistent.

18 MR. WEINTRAUB: No, I don't --

19 THE COURT: Don't be diplomatic. If you think I am
20 inconsistent, tell me that.

21 MR. WEINTRAUB: No. I said I thought we agreed to
22 that. I'm not sure what else I'm supposed to agree with --

23 MR. STEINBERG: Well, let me see --

24 THE COURT: Well, I think the main problem is
25 Mr. Steinberg thinks that if he puts in -- or I'm guessing you

1 think that if you put in something else, then maybe three other
2 people don't have to file them even though they have the right
3 to do that.

4 MR. STEINBERG: Right. I think they need to know --
5 they need to have a deadline upon which they indicate to Your
6 Honor that they'd want to participate in their own pleading and
7 to deal with it. And we'll see what those notices are and how
8 many them are -- there are. And then we could have a -- maybe
9 a telephonic conference so that Your Honor could regulate the
10 flow of papers and still conform with your process. The whole
11 goal is to include those who aren't in the room, to give them a
12 chance to agree to what the people in the room have agreed to
13 vis-à-vis the bellwether complaints.

14 THE COURT: I think we left it that you were going to
15 put your form of order past the other guys anyway.

16 MR. STEINBERG: That's correct.

17 THE COURT: See if you can work out these details on
18 a consensual basis, at least amongst you guys.

19 MR. STEINBERG: Thank you.

20 MR. WEINTRAB: That's fine, Your Honor.

21 MR. WEISFELNER: Your Honor, I apologize. I thought
22 I was unconfused until I just heard the last dialogue between
23 the parties. Your Honor's request with regard to the punitive
24 damage issue for briefs and replies, I thought I understood and
25 I thought that they were inclusive of our issues, even though

1 we're not bellwether, and now I'm a little bit confused. I
2 thought Your Honor wanted to triage and deal with bellwether
3 first. Do you really need to hear from us on the punitive
4 damage issue? And for that matter, do you need to hear from
5 everyone who's not a bellwether participant on the issue of
6 punitive damages at the same time?

7 THE COURT: Well, I don't want to decide the issue a
8 second -- have to decide the issue a second time. If you have
9 something different to say than Mr. Weintraub, I think you
10 should pile on when he does his.

11 MR. WEISFELNER: Okay.

12 THE COURT: And I'm not sure if the concepts are
13 going to be different or not, but I definitely don't want to
14 decide punitives a second time.

15 MR. WEISFELNER: Yes.

16 THE COURT: Okay.

17 MR. WEISFELNER: The only -- that's fine. I
18 understand.

19 THE COURT: Okay. Anything else? Okay. We're
20 adjourned. Thank you.

21 MR. WEISFELNER: Thank you.

22 (Proceedings concluded at 1:13 p.m.)

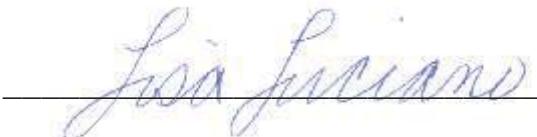
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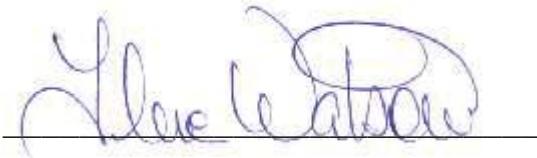
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18 certify that the foregoing is a correct transcript from the
19 official electronic sound recording of the proceedings in the
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